

SBA's National Ombudsman's 2004 Report to Congress

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Contents

The ONO Mission.....	3
ONO Regional Regulatory Enforcement Fairness Board Members, FY 2004	4
Message from the SBA Administrator	7
Introduction by National Ombudsman Michael Barrera.....	8
Executive Summary.....	9
I. ONO Results in Brief.....	11
II. Rating Federal Agency Response to Small Business	12
The Comment Process.....	12
Rating the Agencies.....	14
Federal Agency Rating Criteria for 2004.....	15
Examining Federal Agency Response.....	19
Agency Comments Regarding Ratings	21
Timeliness of Response—Criterion 1	22
Quality of Response—Criterion 2.....	24
Agency Non-Retaliation Policies—Criterion 3	25
Agency Regulatory Enforcement Compliance Assistance—Criterion 4	26
Agency Participation in RegFair Hearings—Criterion 5.....	30
Agency Notice to Small Businesses of Violations and Right to Comment—Criterion 6.....	32
Responding to Federal Mandates: Small Business Paperwork Relief Act—Criterion 7.....	33
Special Initiatives and Best Practices of Federal Regulatory Agencies	35
III. Hearing the Voice of Small Business: Comments Filed.....	37
The High Cost of Compliance	37
Costly Agency Errors.....	39
Confusing and Changing Regulations.....	40
Overly Rigorous Requirements	41
IV. ONO Outreach: Increased Use of SBA Field Offices, RegFair Boards, and Technology.....	43
Regional RegFair Boards: ONO's Eyes and Ears Across the U.S.....	43
ONO RegFair Hearings: Facilitating the Discussion.....	45
Reaching Out and Following Up.....	46
Success with Trade Associations	47
ONO Outreach to Agencies	51
Agency Outreach to Small Businesses	52
Reaching Out to the Underserved.....	53
V. Looking Ahead...Plans for the Future	56
Continuing to Reach Out	56
Making More Creative Use of Technology	56
Increasing ONO Visibility	56
Building Partnerships.....	57
Finally... ..	57

The ONO Mission

The Office of the National Ombudsman (ONO) within the U.S. Small Business Administration (SBA) seeks to foster a more small business friendly Federal regulatory enforcement environment.

The Small Business Regulatory Enforcement Fairness Act (SBREFA). ONO was created pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. Specifically, SBREFA directs the Ombudsman to:

- Conduct Hearings in each of the 10 Federal regions to solicit comments regarding Federal regulatory enforcement activities from small business concerns.
- Work with each Federal agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement-related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel.
- Establish a means to receive comments from small business concerns regarding actions by Federal agencies or agency employees conducting compliance or enforcement activities with respect to the small business concern. ONO also refers appropriate comments to the Inspector General of the affected agency whenever egregious behavior is alleged. If requested, ONO will maintain confidentiality with regard to the person and small business concern making such comments, to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C. App.).
- File an annual report with Congress and affected agencies whereby enforcement activities are evaluated based on substantiated comments received from small business concerns and input from the Regulatory Fairness (RegFair) Boards.
- Provide affected agencies with an opportunity to comment on draft reports and include a section in the final report for those comments that the National Ombudsman chose not to consider before filing the final report.

What is an unfair enforcement action? It can be a repetitive audit or inspection, unreasonable fines or penalties, or threats by a Federal agency and/or acts of retaliation by a Federal agency.

ONO Regional Regulatory Enforcement Fairness Board Members, FY 2004

The Small Business Regulatory Enforcement Fairness Act of 1996, authorized the National Ombudsman and the creation of 10 Regional Regulatory Enforcement Fairness Boards to help small businesses hold Federal regulators accountable for their unfair enforcement actions. Testimony gathered at RegFair Hearings about Federal regulatory activity and comments, concerns, and complaints filed with the National Ombudsman are reported to Congress each year.

RegFair Board members are appointed by the SBA Administrator. All RegFair Board members are volunteers and all are themselves small business owners, operators, or officers. Achieving diversity is a major goal in selecting RegFair Board members so that they reflect an accurate picture of the small business communities they represent. This diversity extends to profession, business goals, gender, geography, market size (e.g., small, medium, large, rural, and urban), ethnicity, and revenues. There is an ONO RegFair Board in each of 10 SBA regions; and in FY 2004, the following people served:

Region I

Leo R. Blais
Pawtuxet Valley Prescription Ctr.
Coventry, RI

James M. Knott, Sr., Chair
Riverdale Mills Corporation
Whitinsville, MA

David A. Tibbetts, Esq.
Smith, Segel & Sowalsky
Boston, MA

Larry S. Schneider
Coldwell Banker
Newcastle, ME

Laura L. Monica
High Point Communications Group
Bow, NH

Region II

W. Timothy Howes, Chair
Howes & Howes
Raritan, NJ

Jose M. Garcia-Ramis
Action Service Corporation
San Juan, PR

Eric Jenkusky
Spark Management Resources
Oneonta, NY

Region III

Pamela Mazza, Chair
Piliero, Mazza & Pargament
Washington, DC

Martin Shaffer
American Vending
Clarksburg, WV

Frank A. Ursomarso, Sr.
Union Park Automotive Group, Inc.
Wilmington, DE

Felix J. Jackson
DataProbe Technical Service
Owings Mills, MD

Beverly Donati
White Oak Turf Care
Richmond, VA

DRAFT

Region IV

R. Bruce McCrory, Chair
Kiker Corporation
Mobile, AL

Paul Hsu, Ph.D.
Manufacturing Technology, Inc.
Fort Walton Beach, FL

George Dobbins, Jr.
Southern Communications Systems
Memphis, TN

Douglas McFarland
Radio Station 98.9 - Charleston
Mt. Pleasant, SC

Stanley L. King
S. L. King & Associates
Atlanta, GA

Region V

Lyle J. Clemenson, Chair
Clemenson Enterprises
Brooklyn Park, MN

Lloyd E. Falconer*
Seward Screw Products, Inc.
Seward, IL

Doug Hilbert
Professional Technical Development
East Lansing, MI

Region VI

A. Joseph Shepard, Chair
Archway Capital, LLC
Dallas, TX

Harold McAlpine
Christmas Tree Farm
Bismark, AR

Jose Cuevas, Jr.
JumBurrito
Midland, TX

DRAFT

Mary Ann Weems
Weems Galleries and Framing
Albuquerque, NM

Regina Hamilton
Jones, Walker
Baton Rouge, LA

Region VII

Paul Kinyon, Chair
Realty Advisors LLC
Cedar Rapids, IA

Clark Stewart
Butler National Corporation
Olathe, KS

Jeanette Prenger
ECCO Select
Kansas City, MO

James J. Ziebarth
Ziebarth Farms
Wilcox, NE

Nikki Sells
Express Personnel Services
Springfield, MO

Region VIII

James J. Larsen
Sioux Steam Cleaner Corp.
Beresford, SD

Salvador Gomez, Jr.
Source One Management, Inc.
Denver, CO

Mary Thoman
Thoman Ranh
Kemmerer, WY

Michael Stransky
FAIA
Salt Lake City, UT

DRAFT

DRAFT

DRAFT

Nancy Warneke-Gaynor
Gaynor River Bend
Whitefish, MT

Brenda Mosher
Casper, WY

Region IX

Frank Ballesteros
PPEP Microbusiness & Housing
Tucson, AZ

Barry M. Gold, Chair
Barry M. Gold & Co.
Irvine, CA

Patricia Chevalier
Blue Hawaiian Helicopters
Kahului, HI

Robert L. Gore
Becker Realty Corporation
Las Vegas, NV

Kimberly King
King Security Services
San Francisco, CA

Region X

Milford Terrell, Chair
DeBest Plumbing & Mechanical, Inc.
Boise, ID

Michael Dahmer
Systems Associates, Inc.
Jerome, ID

Carl Grossman
Public Private Partnerships, Inc.
Portland, OR

Shiao-Yen Wu
9500 Roosevelt Way NE
Seattle, WA

Sue Linford
Linford of Alaska
Anchorage, AK

* It is with deep sorrow that ONO acknowledges the death of Lloyd E. Falconer, 64, of Rockford, Illinois, on November 2, 2004. In 1977, Lloyd joined Seward Screw Products, Inc., where he became an officer of the company. As a constant champion of small business, he joined the National Federation of Independent Businesses and later sat on many national business boards, including serving on the ONO RegFair Board in Region V. His activism was a model for other small businesspeople in terms of taking control of their own destiny. His other roles in the business community included serving as President of Seward Ag Supply, Inc., President of Solarcone, Inc., and member of the Advisory Council on Agriculture, Labor and Small Business of the Federal Reserve Bank of Chicago. Lloyd was a passionate advocate for small business interests throughout his life. He will be greatly missed. He is survived by his mother Vara Falconer, wife Brenda, children Sarah and Andrew, and grandchildren Alexander and John Luna.

Message from the SBA Administrator

I am pleased to present to you the Small Business Administration's (SBA's) *Office of the National Ombudsman's 2004 Annual Report to Congress*.



Early in his Administration, President George W. Bush launched a very proactive Small Business Agenda, which emphasized lower taxes, less regulation, and greater advocacy on behalf of this vital segment of our economy. Through Bush Administration efforts, small businesses received \$75 million in tax cuts and enjoyed \$6 billion in cost savings last year due to advocacy efforts to ease compliance with overly burdensome Federal regulations.

Another key component to advocacy is the work done by the Office of the National Ombudsman, under the leadership of Ombudsman Michael Barrera. Congress created this office in 1996 to give small businesses a voice when they believed that a Federal agency or representative was treating them unfairly. The results achieved by the Office in 2004 are impressive. The Office of the National Ombudsman has become a force in the regulatory environment for small business, as the contents of this Annual Report to Congress will attest.

Going forward, we at the SBA and the Office of the National Ombudsman will not rest on our laurels. We will continue to strive to serve small businesses and respond to their needs, particularly with regard to lifting the Federal regulatory burden off their backs. Doing so will free small businesses to grow, create jobs, be innovative, and contribute even more to our Nation's economy. In the process, we will help small businesses attain their own version of the American Dream.

A handwritten signature in black ink that reads "Hector V. Barreto". The signature is fluid and cursive.

Hector V. Barreto
SBA Administrator

Introduction by National Ombudsman Michael Barrera



In Fiscal Year 2004, the Office of the National Ombudsman continued to “raise the bar” in advocating for America’s small businesses. Due to our increased outreach and the efforts of our Regulatory Fairness Board members, we received more than 450 comments from small businesses and trade associations representing more than 1 million members. Attendance at ONO Regulatory Fairness Hearings grew as awareness of our effectiveness on behalf of small business increased.

Consistent with President George W. Bush’s Small Business Agenda, ONO is committed to taking the unfair regulatory burden off the backs of small business. To that end, we continued to promote change within Federal agencies. Owing to the President’s leadership, Federal agencies are adopting a more small business friendly approach to America’s entrepreneurs by encouraging compliance assistance instead of enforcement as the first action taken when working with a small business. Our message to Federal regulators is to remember that most small businesses want to play by the rules and do not intend to violate regulations. Rather, in many cases, small businesses simply “don’t know what they don’t know” and they need their government’s assistance, not interference. We feel this message has resonated with Federal agency personnel here in Washington, DC, and across the country. Four years ago, no one would have imagined that a member of the President’s Cabinet would conduct a day-long training session for regulators on compliance assistance. In 2004, Labor Secretary Elaine Chao did exactly that and personally presided over the session to emphasize the importance President Bush places on helping small business.

ONO has held Hearings in 43 States over the last three years. As we traveled the country, we listened to the concerns of small business and carried their issues to the Federal agency involved. We also increased our efforts to reach out to minority, women, and veteran small business organizations to make them aware that the National Ombudsman is ready and willing to help them with any challenges they experience with Federal agencies. Moreover, in FY 2004, attendance by Federal agency representatives increased at our Hearings, which often resulted in the resolution of issues at the Hearing itself. I especially want to commend the Department of Labor, the Internal Revenue Service, and the USDA Food Safety and Inspection Service for attending *every* Regulatory Fairness Hearing.

I am pleased that the President and SBA Administrator Hector Barreto have entrusted me and my staff with this important responsibility. This Report to Congress represents the results we have achieved and reflects our progress in encouraging Federal agencies to understand the needs and dreams of small business.

A handwritten signature in black ink, appearing to read "MB", written over a horizontal line.

Michael L. Barrera
National Ombudsman

Executive Summary

In FY 2004, the Office of the National Ombudsman (ONO) concentrated on strengthening its staff and on increasing its outreach efforts to small business. Additionally, ONO trained 26 new RegFair Board members. These new members, along with existing members and the SBA's Office of Advocacy, played important roles in helping pass State SBREFA laws and in conducting a variety of outreach and marketing initiatives to raise awareness of ONO. Also, ONO staff continued to communicate key Federal agency decision-makers about SBA and ONO activities, establishing new partnerships, holding agencies more accountable, and changing the relationship between government and industry to one of mutual collaboration and benefit. This approach paid off in FY 2004, as the agency response rate to filed comments increased along with the quality of the responses; in fact, nearly all agencies received an "A" for their Quality of Response. Nationally, agencies significantly increased the amount of compliance assistance training they gave small businesses, engendering a more small business friendly relationship.

ONO rated approximately 60 Federal regulatory agencies and divisions in FY 2004, based on how they responded to seven rating criteria that looked at (1) timeliness, (2) quality of response, (3) existence of a non-retaliation policy, (4) provision of compliance assistance, (5) participation in RegFair Hearings, (6) provision of SBREFA rights notice, and (7) compliance with the Small Business Paperwork Relief Act of 2002 (SBPRA). Also, Federal agencies continued to demonstrate "best practices" in how they addressed their SBREFA responsibilities and in their approaches to working with small businesses. Examples of innovative approaches are highlighted throughout this report.

SMALL BUSINESSES DRIVE OUR ECONOMY

Small businesses—those that are independently owned and operated with fewer than 500 employees—represent more than 99.7 percent of all employer firms, and were responsible for *all* net new jobs in 2000-2001, a similar result occurring during the economic downturn of the early 1990s. Numbering 25 million in the United States, small businesses represent over 50 percent of our gross domestic product. They also:

- Employ half of all private sector non-farm employees.
- Have generated 60–80 percent of net new jobs annually over the last decade.
- Employ 39 percent of private sector workers in high-tech occupations (according to the Census Bureau).
- Are 53 percent home-based and 3 percent franchises.
- Make up 97 percent of all identified exporters, producing 29 percent of the known export value in FY 2001.

Source: SBA Office of Advocacy, "Small Business by the Numbers," 6-17-04.

Even though positive changes continue to be made in the regulatory enforcement arena, small businesses still feel the unequal effects of regulatory enforcement actions. These concerns emerged through Hearings and Rountables, trade association meetings, and small business forums, wherein ONO heard about the high cost of compliance and agency errors, the

frustration of confusing and changing regulations, the superfluity of overly rigorous requirements, and the pervasiveness of fear. Cost of compliance is a major concern of small businesses, with Federal regulations costing those with few than 20 employees approximately \$7,000 a year per employee to comply—a rate that is 60 percent above what it costs larger firms.¹ ONO counters these costs by helping small businesses seek relief from excessive regulatory enforcement burdens. A recent ONO Economic Impact Analysis Study showed that ONO saved small businesses at least \$19.7 million in 2003.²

The main avenue through which ONO learns of particular enforcement concerns is the RegFair Board membership, whom ONO calls its “eyes and ears” across the country. By working with trade associations, reaching out to individual small businesses, and raising awareness of ONO, RegFair Board members are the best advocates for the small businesses they represent—in fact, all RegFair Board members are small business owners themselves, so they understand first-hand the concerns that are raised. Working in tandem with SBA field offices around the Nation, Board members engaged in myriad activities to spread the word about ONO and to elicit small business concerns. ONO also continued to work closely with the SBA’s Office of Advocacy to respond to the needs of small business and to the President’s message that “small business matters.”

In FY 2004, ONO reached roughly 9 million small businesses through trade associations, chambers of commerce, newsletters, and media outlets. Trade associations have been an effective communications channel for ONO and in FY 2004 resulted in 90 comments filed in response to the actions of a single regulatory agency. ONO also continued its outreach to Federal agencies to increase their participation and to improve comment and response efficiency connected to the SBREFA process. Many agencies in turn have increased outreach to small business entities through their websites. ONO also continued to respond to the needs of emerging small business communities, targeting leadership from diverse small business groups (e.g., ethnic minorities, veterans, women, and other traditionally underserved markets) to apprise them of available resources related to Federal regulatory enforcement challenges.

Looking ahead, ONO will continue to develop and engage in varied and innovative outreach efforts to intelligently leverage resources through optimizing use of technology and the Internet; partnerships with SBA and other Federal agencies, trades, and chambers; and stepped-up outreach to small businesses, community organizations, and media outlets. ONO will always hold high the flame for small businesses, supporting their efforts to confront unfair and excessive regulatory enforcement when it happens. ONO wants to make it easier for small businesses to do what they do best—conduct business. Doing so will continue to improve the economy as a whole.

¹ Interview with Tom Sullivan, Chief Counsel, SBA’s Office of Advocacy.

² *Economic Impact Analysis Study*, Jack Faucett Associates.

I. ONO Results in Brief

The following is a summary of notable ONO accomplishments during FY 2004:


- ONO conducted 18 Hearings in 18 States and 10 regions—two were bilingual, one in English and Spanish, and one in English and Mandarin Chinese.
- ONO received a total of 445 comments from small businesses.
- As reported by Federal agencies through the Small Business Paperwork Relief Act of 1992 (SBPRA) for FY 2003, total dollar amount of civil penalty abatements, reductions, or waivers for small businesses exceeded \$1 billion for the first time ever.
- ONO hosted two interagency meetings last year and held 14 TEAM (Emerging Markets) meetings around the country.
- The first Office of the National Ombudsman *Economic Impact Study* was published.
- ONO had more than 439 telephonic and email customer assistance actions, and wrote and distributed six E-Blast electronic newsletters to 2,800 subscribers for each issue.
- ONO held five RegFair Board member meetings/conference calls and recruited 26 new RegFair Board members to fill membership slots and provide training.

II. Rating Federal Agency Response to Small Business

Agencies are increasingly taking small business comments to heart, particularly as the National Ombudsman continues to heighten follow-up efforts to hold them accountable. Agencies were more responsive to small businesses in FY 2004 and provided more compliance assistance training, guidance, and encouragement to small businesses.

Agencies also increased their efforts to educate Federal employees, often incorporating SBREFA requirements into personnel training curricula, thereby encouraging a more cooperative atmosphere with the businesses they regulate.

The Comment Process

ONO has several methods for receiving comments from small businesses. Comments are delivered by U.S. mail, at Hearings, online via the ONO website (www.sba.gov/ombudsman), or by email (ombudsman@sba.gov), fax, or toll-free telephone (1-888-REG-FAIR or 1-888-734-3247). The ONO comment form (SBA 1993—Federal Agency Comment Form) is also available at www.forms.gov. Figure  below illustrates the breakdown of how comments were received in 2004. The trend is for much greater use of ONO's website to file comments, increasing efficiencies for the Office as well as the busy small businessperson. ONO provides an online fillable form that commenters complete and can instantly send via the website, part of continuing efforts to streamline processes and reduce filing time. Small businesses that fear retaliation may register their comments confidentially.

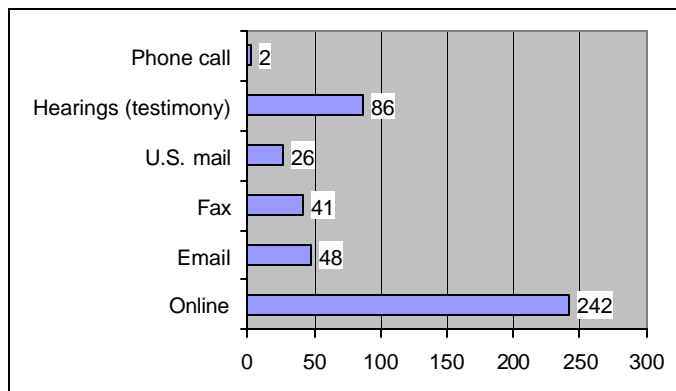


Figure __. How Comments Were Received

"We share your interest in reducing the regulatory burden placed on small businesses and look forward to a continued partnership with your office in achieving the goals of the Small Business Regulatory Enforcement Fairness Act."

—*Michael Chesman, Director, Office of Taxpayer Burden Reduction, Internal Revenue Service.*

"ONO should be viewed as an important piece of the regulatory puzzle that small businesses face. While SBA's Office of Advocacy gives small businesses a presence prior to the issuance of regulations, the Ombudsman gives them recourse subsequent to that issuance, which really is an important part of trying to provide help to the small business community—help that is very necessary for small businesses."

—*Giovanni Coratolo, Director of Small Business Policy, U.S. Chamber of Commerce.*

"The Ombudsman's Office, in terms of fighting the fight against agency abuses, is indispensable. It's an indispensable tool for small business."

—*Andrew Langer, Manager, Regulatory Policy, National Federation of Independent Businesses.*

All comments received are reviewed to ensure that they are within ONO's jurisdiction. If a "yes" answer can be given to these three questions, then the Ombudsman has jurisdiction:

1. Are you a small business owner, small government entity (i.e., those serving populations below 50,000), or small nonprofit organization?
2. Is your comment about a *Federal* Government agency?
3. Have you been the subject of unfair or excessive regulatory enforcement action by a Federal agency?

If jurisdiction exists, a letter is sent to the commenter indicating that the comment has been forwarded to the appropriate Federal agency. Many times, small businesses submit comments that address what may be hot-button issues for them but are issues out of ONO's jurisdiction, such as when the commenter is not a small business or the issue pertains to a State issue. In these cases, the commenter is sent a letter referring him or her to the appropriate authority, and in some cases the comment itself is referred by ONO directly to the agency.

Of the 445 total comments submitted in FY 2004, 261 were "jurisdictional." The remaining 184 comments were referred, or directed, to other agencies and/or departments within SBA, thereby fulfilling another major ONO goal: to put small businesspeople in touch with those who can help them, even when it is not ONO.

"We may not always promise a small business the answer they want, but we will try to get them an answer or someone who can provide them an answer."

NATIONAL OMBUDSMAN MICHAEL BARRERA

Figure __ shows a breakdown of who filed comments in FY 2004.

Once a comment is reviewed and jurisdiction determined, the small business is asked for substantiating documentation. This information includes dates, locations of the business, and an explanation of why the small business believes it was treated unfairly. The completed packet is then forwarded to the appropriate Federal agency, with a letter from ONO containing a list of seven questions for the agency to answer (see sidebar, next page). By asking these questions, ONO can assess the degree to which an agency considered the effects of its enforcement action on small business and the kinds of quality controls and follow-up activities that took place, such as conversations with field personnel about a particular case.

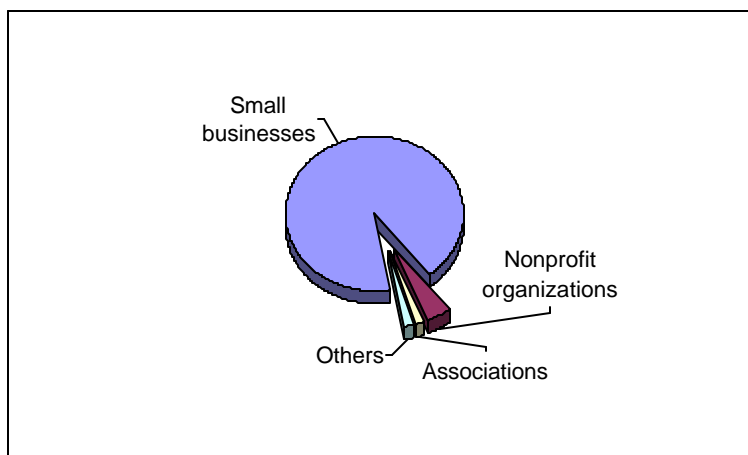


Figure __. Who Comments Were Filed By

Generally, ONO faxes and/or emails the paperwork to agencies and works with a designated agency contact, helping to expedite the response. If the commenter alleges retaliation or any grossly unprofessional type of activity, ONO will refer the comment to the Inspector General within the particular agency.

Once an agency response letter is received, ONO forwards a copy to the small business. In some cases, fines have been lowered or eliminated and decisions changed in favor of the small business (see success story below). If an agency foresees a delay in responding, it is asked to send a detailed letter to ONO stating the reason(s) why. Again, ONO received quality responses in 2004, with nearly every agency receiving an “A” rating for this criterion.

Success story: A mining company filed a comment on two citations it received from a regulatory agency for late filing of quarterly reports, which the company had mailed on time. The comment was sent to DOL, which responded in 30 days. Its investigation concluded that the reports were, in fact, filed on time, and DOL has rescinded the citations. Additionally, the Assistant Secretary of Labor for Mine Safety and Health Administration, David D. Lauriski—clearance obtained?, personally apologized to the owner of the small business involved, for his time and effort.

Rating the Agencies


ONO is required to rate Federal agencies on how they respond to the comments of small businesses and entities. The rating process allows agencies to work toward achieving regulatory enforcement fairness objectives, which are in line with the criteria on which they are evaluated. In basic terms, ONO is looking at agencies for their openness in providing information on regulatory requirements and for their fairness in enforcing them. Federal agencies are increasingly cooperating with ONO and conducting

List Of Questions Asked Of Federal Agencies Receiving Comments

- Why and how did you take the enforcement or compliance action?
- Did you notify the small business about the enforcement or compliance action? If so, did your agency provide the business an opportunity to come into compliance?
- Did you review the action of the investigator, auditor, inspector, or individual to ensure compliance with your agency's policies and procedures?
- Were your agency's regional and program offices responsive to the small business?
- Was the small business informed of its right to contact the Office of the National Ombudsman?
- Did your agency consider alternatives such as waiving penalties or reducing fines before seeking an enforcement action against the small business?
- As a result of the issues raised by this small business concern, has your agency implemented any changes to address this situation in the future? If so, please describe the changes implemented.

more outreach with small businesses, continuing to change the regulatory enforcement culture to a more small business friendly one.

Timeliness and quality of response are important objectives, as is the development or strengthening of non-retaliation policies and attendance at Hearings and Roundtables. Availability of regulatory enforcement compliance assistance is also

an important objective and therefore an evaluative criterion, as is the provision of notice when citations are issued, including agencies informing small businesses of their right to comment to the National Ombudsman. Figure  in this chapter presents an evaluation and rating of agency responsiveness to the FY 2004 rating criteria.

“I notice a real change in the attitude of State and Federal bureaucrats in terms of working with small business owners.”

—Bill Smith, State Director of the National Federation of Independent Businesses, speaking at the Madison, WI, Hearing, April 2004.

“We try to make it easier for small business to do what they do best—conduct business.”

NATIONAL OMBUDSMAN MICHAEL BARRERA

Federal Agency Rating Criteria for 2004

Below are the seven criteria used to rate Federal agency response to small business concerns in FY 2004. The text in blue represents changes planned for FY 2005.

1. Timeliness* in responding to small entity comments.
 - Over 30 days
 - Over 60 days
 - Over 90 days
 - Over 120 days
2. Quality of response to small entity comments.
 - The agency addressed the questions posed in ONO's letter to them forwarding the comment [to be added in FY 05: “**and responded to the specific comment made by the small entity**”].
 - The agency response came from a high-level representative (i.e., someone from the SBREFA office at the agency or someone from the program office directly related to the comment).
 - The agency provided detailed information showing that it looked into the facts of the specific comment and the actions of the individual(s) agency personnel involved in the enforcement activity.
 - The agency responded [in FY 05: “**or took corrective action(s) including, but not limited to, reducing or waiving penalties, adopting a new policy to avoid recurrence of an inappropriate result, or conducting additional outreach with compliance assistance**”] to the comment made by the small entity.

3. Agency non-retaliation policy.
 - The agency has adopted a written non-retaliation policy.
 - The agency ensures its employees are aware of its non-retaliation policy.
 - The agency ensures small entities are aware of [FY 05: “**and may access**”] its non-retaliation policy.
 - Agency employees and small entities are aware of the consequences of not adhering to the agency non-retaliation policy.
4. The agency establishes a baseline and provides measurable regulatory enforcement compliance assistance, with increase expressed in percent over baseline.
 - The agency provides small entities with a compliance assistance telephone number.
 - The agency provides a compliance assistance website.
 - The agency makes a compliance assistance employee available to small entities.
 - The agency provides [FY 05: “**and documents**”] compliance assistance education.
5. The agency participates in Regulatory Enforcement Fairness Hearings and meetings when issues** related to their mission are presented in testimony.
 - More than 90 percent of the time.
 - More than 80 percent of the time.
 - More than 70 percent of the time.
 - More than 60 percent of the time.
6. The agency [in FY 05: “**establishes a policy wherein it**”] provides written and verbal notice to small entities when a citation or notice of regulatory violation is issued. [In FY 05: “**Policy should include, but not be limited to**”]:
 - The agency provides written notification of SBREFA rights to small business concerns.
 - The agency informs small business concerns of their right to comment about the enforcement/compliance process to the National Ombudsman’s office.
 - The agency verbally informs small entities of their right to comment about the enforcement/compliance process to the National Ombudsman’s office.
 - The agency provides in writing [in FY 05: “**and/or on appropriate website locations**”] the National Ombudsman's Internet address, www.sba.gov/ombudsman, to small entities.
7. The agency complies with reporting requirements of the Small Business Paperwork Relief Act of 2002 (SBPRA), H.R. 327-5, paragraphs 1, 2, 3, and 4, and presents a copy of these reports to ONO on or before the due date established by statute.
 - The number of enforcement actions in which a civil penalty is assessed.
 - The number of enforcement actions in which a penalty is assessed against a small entity.
 - The number of enforcement actions in which a civil penalty is reduced or waived **for all and small entities**.
 - The total monetary amount of reductions or waivers against **all and** small entities.

[In FY 05]:

- **Reports more than 30 days late will result in a grade reduction.**
- **Reports more than 60 days late will result in a two -grade reduction.**
- **Reports more than 90 days late will result in a failing grade.**

*Response time is calculated from the day the comment is forwarded to the agency until it is received by the ONO. Although ONO may accept requests for additional time to respond, the clock, for rating purposes, does not stop.

**If no issues related to the agency's mission are presented during the fiscal year, this criterion will be rated as not applicable.

ONO used the following questionnaire form in FY 2004 (Figure __) to gather information needed from agencies, to help determine their ratings.

To assist the National Ombudsman in correctly rating your agency in the FY04 Annual Report to Congress, your input is needed on the following items for your Agency:_____

- 1) Do you have a written/online non-retaliation policy? Yes ____ No ____

a) How do small businesses access this information?

b) How is it disseminated throughout your agency or sub-agencies?

- 2) How do you provide compliance assistance to small business?

- 3) What tools do you use to inform small business on SBREFA rights and how to contact ONO?

- 4) To confirm our records, please list the ONO Hearings and Roundtables where you had agency representation in attendance.

(Hearings)

(Roundtables)

[illegible]

Figure 1. ONO Questionnaire to Agencies for FY 04 Annual Report

Examining Federal Agency Response

ONO rated approximately 60 Federal regulatory agencies and their divisions in resolving complaints about excessive enforcement of Federal regulations. This rating, which is somewhat comparable to a “customer satisfaction” rating for the different agencies, is based on how they responded to the seven criteria delineated in the section above. Agencies receive a grade for each criterion, with all grades then averaged for a final rating.

Federal agencies made great strides in improving the Federal enforcement environment in FY 2004. Response time improved and a dramatic increase occurred in the compliance assistance offered to small business.

FIGURE __. RATING OF AGENCIES ACCORDING TO FY 2004 C RITERIA

AGENCY	Timeli- ness	Quality of Response	Non- Retaliation	Compliance Assistance	RegFair Participa- tion	Informs Small Business	PRA Report Submitted	Annual Rating
Agriculture	B	A	B	B	C	A-	B	B
Agricultural Marketing Service	B	A	B	B	N/A	A	B	B+
Animal Plant Health Inspection Service	C	B	A	A	N/A	A	B	A-
Food Safety Inspection Service	B	A	A	A	A	A	B	A-
Food and Nutrition Service	A-	A	C	C	C	C	B	B
Forest Service	D	A	C	C	C	C	B	B
Foreign Agricultural Service	A-	A	N/A	N/A	N/A	A	B	A
Rural Development	N/A	N/A	C	C	N/A	C	B	B+
Commerce	B+	A	A	A	N/A	A	B	A-
Commodity Futures Trading Commission	N/A	N/A	A	A	N/A	A	A	A
Consumer Product Safety Commission	N/A	N/A	A	A	N/A	A	F	B
Defense	B+	A	F	F	N/A	F	F	D+
U.S. Army Corps of Engineers	B	A	F	F	N/A	F	F	D+
Defense Contract Management Agency	B+	A	C	C	N/A	C	F	C+
Air Force	N/A	N/A	F	F	N/A	F	F	F
Energy	D+	A	F	C	N/A	A	B	C
Environmental Protection Agency	C	A	A	A	A	A	C	B+
Equal Employment Opportunity Commission	A-	A	A	A	A	A	A	A
Federal Communications Commission	A-	A	B	B	A	A	A	A-

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AGENCY	Timeli- ness	Quality of Response	Non- Retaliation	Compliance Assistance	RegFair Participa- tion	Informs Small Business	PRA Report Submitted	Annual Rating
Federal Deposit Insurance Corporation	N/A	N/A	A	A	N/A	A	A	A
Federal Reserve System	N/A	N/A	A	B+	N/A	A	A	A
Federal Trade Commission	A	A	A	A	N/A	A	A	A
General Services Administration	A-	A	F	A	N/A	A	F	B-
Health and Human Services	C	A	A	B	C	A	B	B+
Centers for Medicare & Medicaid Services	C+	A	A	C	A	A	B	B+
Food and Drug Administration	B	A	A	A	A	A	B	A-
Homeland Security	A	A	C-	A	A	A	F	B
Coast Guard	A-	A	A	A	N/A	A	C	A-
Customs and Border Protection	A-	A	A	B	A	A	A	A-
Citizenship and Immigration Services	F+	A	C	C	C	C	F	C-
Federal Energy Regulatory Commission	A	A	A	A	N/A	A	A	A
Housing and Urban Development	C+	B	A	A	N/A	A	A	B+
Interior	B	A	A	B	B	B	A	B+
Bureau of Land Management	B	A	B	A	B	B	A	B+
National Park Service	B	A	C	C	N/A	C	A	B
Internal Revenue Service	C	A+	A	A	A	A	A	A-
Justice	C+	A	A	A	N/A	N/A	F	B
Office of Consumer Litigation	A-	A	C	C	C	C	F	C+
Bureau of Prisons	B	A	C	C	N/A	C	F	C
Bureau of Alcohol, Tobacco, Firearms, and Explosives	F	A	C	C	F	D	F	D
Labor	C+	A	A	A	A	A	A	A-
Occupational Safety and Health Administration	C	A	A	A	A	C+	A	A-
Mine Safety and Health Administration	B	A	A	A	A	B	A	A
Wage and Hour Division	D+	A+	A	A	A	B	A	B+
National Aeronautics and Space Administration	N/A	N/A	A	C	N/A	N/A	F	C

AGENCY	Timeli-ness	Quality of Response	Non-Retaliation	Compliance Assistance	RegFair Participa-tion	Informs Small Business	PRA Report Submitted	Annual Rating
National Credit Union Administration	A-	A	A	A	N/A	C	A	A-
National Labor Relations Board	A	A	N/A	A	N/A	A	A	A
Nuclear Regulatory Commission	N/A	N/A	A	B	N/A	C	A	B
National Science Foundation	A-	A	A	D	N/A	C	F	C+
Pension Benefit Guaranty Corporation	N/A	N/A	A	A	N/A	A	A	A
Securities and Exchange Commission	A-	A	A	A	N/A	A	A	A
Small Business Administration	A	A	A	A	A	A	A	A
State	A	A	A	A	N/A	A	A	A
Transportation	B+	A	A	A	N/A	A	A	A-
Federal Highway Administration	A-	A	A	B	N/A	A	A	A-
Federal Aviation Administration	C	A	A	B	N/A	A	A	B+
Federal Motor Carrier Safety Administration	A	A	A	B	N/A	A	A	A-
National Highway Traffic Safety Administration	N/A	N/A	A	B	N/A	A	A	A-
Research and Special Programs	A-	A	A	B	N/A	A	A	A-
Veterans Affairs	D-	A	C	D	N/A	C	F	C-

Agency Comments Regarding Ratings

After ONO completed its initial draft report, it was posted to the ONO website for comment by the agencies and RegFair members. Several agencies responded and adjustments were made. The following agency comments are those that ONO determined did not justify a rating change:

1. “Emphasis on rapid responses to comments may garner EPA a high grade for speed, but come at the expense of our efforts to assist both SBA and the commenter with meaningful information.”—*Walter B. Smith, Director, Office of Regulatory Enforcement.*
2. *ETC.*

Timeliness of Response—Criterion 1

In FY 2004, more agencies responded comprehensively to the comments and inquiries of small business. Several also responded in a timely manner, with 35 out of 51 agencies rated receiving between an A and B in this category. Others made efforts to improve their timeliness track records (see sidebar). The Consumer Product Safety Commission (CPSC) views timeliness of response as an important part of overall customer satisfaction, and in FY 2004 the agency's goal of responding to 80 percent of all small business inquiries within 3 business days was exceeded, as stated in its FY 2004 *Performance and Accountability Report*. EPA (earning a "C" for timeliness) explained that a rapid response might come at the expense of a thorough one. IRS (receiving a "C" for timeliness) expressed similar concerns, its Taxpayer Advocate Service (TAS) calling for modification of the timeliness criterion to address the complexity of the issues it receives in comments and to ensure that its answer is accurate and complete. A TAS representative argued that a complete answer sometimes requires extensive gathering of documents and a detailed letter documenting each important fact and action that was taken on a particular taxpayer account. The Ombudsman continues to stress the importance of a timely response, noting that even if the reply is less than a full response or is not what the commenter hoped for, any response is better than nothing at all.

Timeliness: The Federal Aviation Administration (FAA) has been consistently late in its responses to comments. The DOT took action, arranging to track responses due from the FAA through the agency's Deputy Chief Counsel, who would ensure that the comments got the high-level attention they needed, and in a more timely fashion. The first comment he received was responded to within 10 days, and response time in general has been reduced.



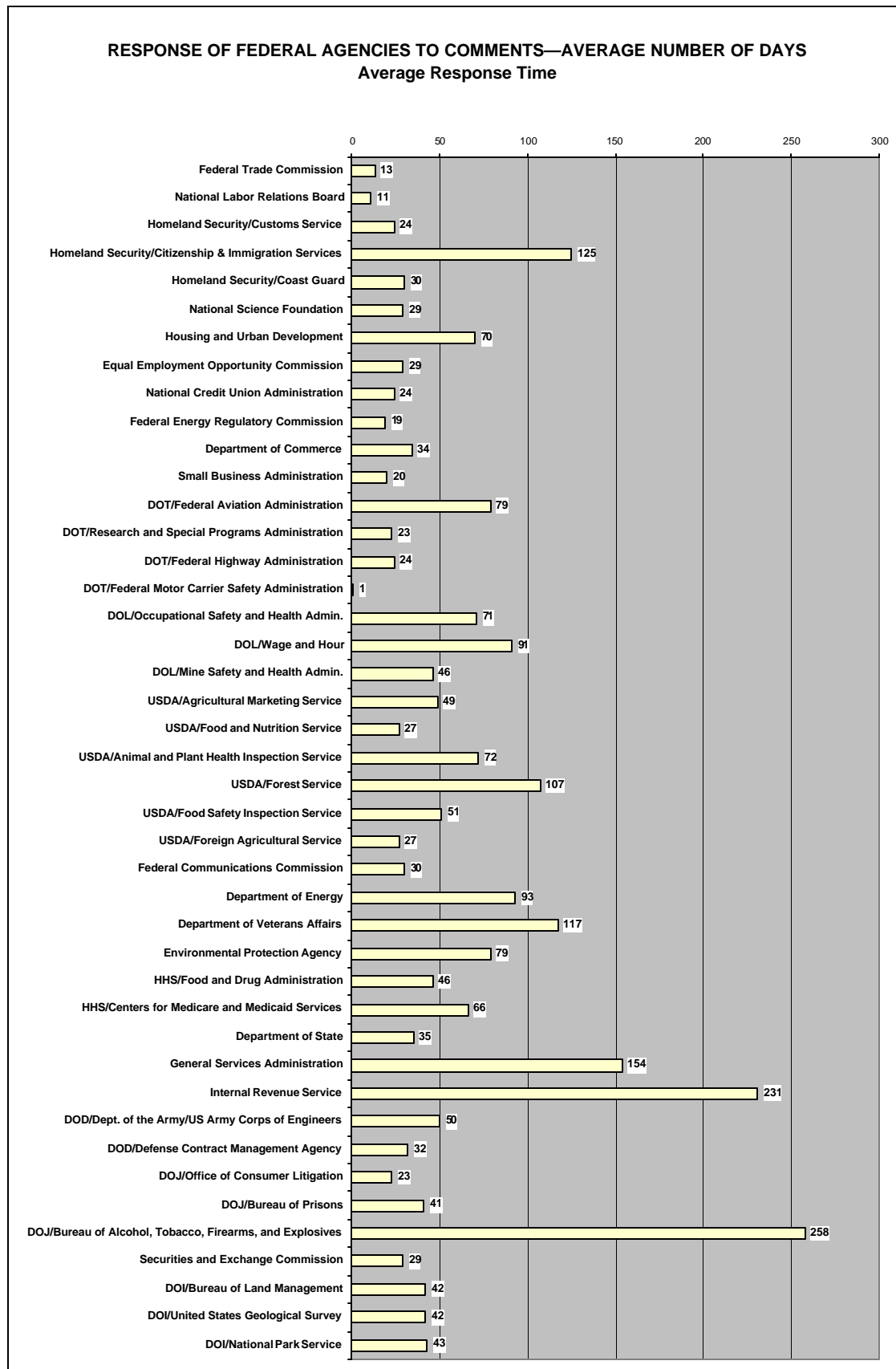
Timeliness grades are given according to the timelines in Figure  below. Figure  following shows how many days on average that it took Federal agencies to respond to the comments that they received in FY 2004.

Figure __. ONO Rating Rationale for Timeliness

Days	Rating
0 - 20	A
20 - 30	A-
31 - 40	B+
41 - 55	B
56 - 60	B-
61 - 70	C+
71 - 85	C
86 - 90	C-
91 - 100	D+
101 - 115	D
116 - 120	D-
121 - 130	F+
Over 130	F

FIGURE RESPONSE OF FEDERAL AGENCIES TO COMMENTS—AVERAGE NUMBER OF DAYS

Quality of Response—Criterion 2

[rework? per Michael B.] ONO asks agencies to consider the unequal effects their regulations, fines, and penalties can have on the small business owner, and to consider alternative strategies that include educating over penalizing and reducing or eliminating fines and penalties instead of compounding them. Or as one small business owner put it at the St. Louis, MO, Hearing: “For a small business, when they first get caught on a particular item, let them just pay back the amount and the interest, don’t fine them. . . just like you would with your child, give them a warning.” ONO essentially looks at whether agencies addressed the small business’ concern without giving an overly bureaucratic or “empty” response.

It is noteworthy that nearly all agencies rated in the “Quality of Response” category received an “A” in FY 2004. Response quality can mean showing the flexibility to resolve issues immediately, or providing a thorough answer—even if it’s not what the small business wants to hear, or other responses in between. To illustrate—

Success story: A manufacturing company filed a comment stating that it had done business with the government for 40 years and had never had problems until a new government safety inspector visited the plant and claimed it had safety violations. The report closed the company down without the necessary time to make corrections. The plant had responded to the agency with a plan and dates for action. Upon receiving the small business’ testimony given at the Columbus, OH, RegFair Hearing, the agency (DOD’s Defense Contract Management Agency) reviewed the circumstances and declared the situation resolved, allowing the company to resume production.

- The majority of IRS responses come from its Taxpayer Advocate Service, whose mission is to resolve taxpayer issues at the point of first contact and recommend changes that will prevent problems in the future. Frequently, TAS representatives who are present at Hearings will help commenters resolve their issues on the spot. TAS wishes to stress quality of response, believing it should be weighed more heavily than timeliness.
- In 24 days from the time it received the comment from ONO, the National Credit Union Administration (NCUA) Executive Director responded to a small credit union’s complaint that NCUA improperly denied its request to expand its field of membership. While the response was not the one hoped for, it nonetheless addressed the questions posed in ONO’s letter and the specific comments made by the small credit union. It included a detailed review of the facts supporting the decision by the appropriate supervisory region and the subsequent decision by the NCUA Board to deny the expanded field of membership. This illustrates that a well-documented “no” is better than no response at all or a protracted “we’ll get back to you.”

Agency Non-Retaliation Policies—Criterion 3

ONO stresses to agencies the importance of adopting formal *written* non-retaliation policies designed to prevent acts that punish a small business for complaining about an agency action. Agencies are heeding this advice. In FY 2004, 10 agencies joined the growing list of those with written policies, a great achievement (double the annual goal of **four**) and a welcome trend (see Figure __).

Success Story: The owner of a child development center filed a comment concerning employee wages and requirements. Even when she presented all required documentation, the investigator, who had come to her place of business, challenged her. As a result of her comment, the Federal agency involved—in this case, DOL—investigated the case and determined that the small business had acted in accordance with the employees' schedule requirements and that action against the company was not warranted.

Figure __. Agencies Adopting Written Non-Retaliation Policies

Agencies Adopting Written Non-Retaliation Policies in FY 02	Agencies Adopting Written Non-Retaliation Policies in FY 03	Agencies Adopting Written Non-Retaliation Policies in FY 04	Proposed for FY 05
Agriculture	APHIS (sub-agency of Agriculture)	Bureau of Industry and Security	Education
Consumer Product Safety Commission	Commodity Futures Trading Commission	Centers for Medicaid and Medicare Services	
Customs	Federal Trade Commission	Coast Guard	
Equal Employment Opportunity Commission	National Aeronautics and Space Administration	Commerce	
Federal Communications Commission	Occupational Safety and Health Administration	Environmental Protection Agency	
Federal Deposit Insurance Corporation	Small Business Administration	Health and Human Services	
Food and Drug Administration	State Department	Housing and Urban Development	
Interior	Veterans Affairs	Justice	
Internal Revenue Service		National Oceanic and Atmospheric Administration	
Labor		National Science Foundation	
National Credit Union Administration			
Pension Benefit Guaranty			
Securities and Exchange Commission			
Transportation			

Agencies have various means of communicating their non-retaliation policies, many posting them on agency websites. USDA, with multiple sub-agencies, publishes its non-retaliation policies on individual program websites. For example, the policy for USDA's Food Safety Inspection Service (FSIS) is posted to the agency's Small and Very Small Plant Outreach home page, with links to materials and other resources created for small and very small plants. This site includes a link to the Small Business Protection Laws and the Ombudsman's website. Examples of other written non-retaliation policies that Federal agencies have in place are described below:

- The U.S. Coast Guard distributed its non-retaliation policy through an "ALCOAST" message from the Judge Advocate General. The policy is also the subject of several intranet site links. Further, the Coast Guard's new manual governing its principal regulatory activities also makes it clear that before a new regulation takes effect, the agency's SBA liaison officer must review and approve it as being in compliance with policies, including the non-retaliation policy, which is mentioned by name.
- The U.S. Customs and Border Protection (CBP) non-retaliation policy, included in agency training materials for employees, states in part:

This agency strictly forbids retaliatory acts by its employees. As such, you should feel confident you will not be penalized for expressing your concerns.

- The IRS has taken a number of steps to prevent retaliation and has policies in place to deal with it effectively should it happen, including the mandatory termination of IRS employees for specific instances of misconduct.
- NCUA references its non-retaliation policy on the cover page of every examination report given to a credit union as part of what to do if the credit union disagrees with the report:

Any retaliation by NCUA staff against a credit union making any type of appeal will subject the employee to appropriate disciplinary or remedial action by the appropriate supervisor. Such disciplinary or remedial action may include oral or written warning or admonishment, reprimand, suspension, or separation from employment; change in assigned duties; or disqualification from a particular assignment, including prohibition from participating in any examination of the credit union that was the subject of the retaliation.

- The Department of Transportation reiterated its non-retaliation policy (DOT Policy on the Rights of Small Entities to Enforcement Fairness) in a Department-wide memo that directed DOT agencies to re-disseminate the policy through multiple channels to frontline inspectors, enforcement and compliance personnel, and to their regulated industries, especially small entities.

Agency Regulatory Enforcement Compliance Assistance—Criterion 4

Agencies responded in a variety of creative ways to this rating criterion, which looks not only at the types of regulatory enforcement compliance options made available to small businesses, but at whether the compliance information is easy to find and access. This criterion also examines evidence of *how* the information is getting out and whether agencies

have complied with SBREFA requirements to provide compliance assistance education (see sidebar for success story).

Agencies engaged in multiple efforts to provide this education and assistance, including reaching out to Native American food safety workers and operators of slaughtering and processing facilities in several western States and meeting with Alaskan Native reindeer herders on processing and distributing their products. Agencies collaborated with universities to hold Roundtable meetings and workshops, offered multimedia training courses to regulated businesses, attended trade association meetings, and made an array of resources available on their websites and as part of inspections, seminars, classes, symposia, conference calls, and other outreach.

ONO encourages flexible policies that allow small businesses to make a good faith effort to comply with rules and regulations, and rewards compliance assistance efforts that enlarge understanding and are not just an empty exercise to fulfill a requirement. For example, the U.S. Coast Guard offers commercial fishing vessels free dockside examinations to assess their compliance with Coast Guard requirements. If discrepancies are found, a “work list” is prepared for the vessel but no citation is issued.

Here are other select agency examples:

- USDA’s Agricultural Marketing Service (AMS) launched a new interactive CD to be distributed to clients through trade shows, cooperative extension service educational programs, and State Departments of Agriculture. The CD provides complete information on the Federal Pesticide Recordkeeping regulation and how to properly keep restricted-use pesticide records.
- AMS’s Fruit and Vegetable (F&V) Program uses 34 marketing order administrative committees to actively communicate with all small businesses regulated under marketing orders. The committees explain the requirements and issue periodic informational packages written in plain English to keep handlers informed of public meetings, current and proposed regulatory requirements, and compliance procedures.
- USDA’s Food Safety Inspection Service holds workshops throughout the country and uses web casting to reach a greater number of people. The agency has also continued use of cooperative agreements to partner with universities to provide small and very small plants with a more in-depth understanding of Hazard Analysis and Critical Control Point

Success Story: When a small plant in Louisiana, which made a ready-to-eat product, failed an inspection because of the presence of a pathogen, Food Safety Inspection Service (FSIS) and university experts met with the establishment and instructed them on ways to get rid of it. The plant followed through on these recommendations and submitted an action plan, allowing it to resume operations. A follow-up inspection revealed that the pathogen had been eliminated. According to FSIS, “The success of the plant in eradicating the pathogen from the facility may be directly linked to the SBREFA information provided by FSIS personnel and the assistance provided by the university involved.” The company went from blaming the government to thanking the FSIS for putting it in touch with the university experts who helped them resolve a food safety problem in their plant.

(HACCP) systems and emerging food safety concerns. Workshops held in 2004 explained new rules designed to prevent human exposure to “mad cow” disease and to *e. coli* bacteria. Easy-to-understand workbooks are distributed to participants.

- Both bureaus within the Department of Commerce (Commerce) that regulate small business activities—the National Oceanic and Atmospheric Administration (NOAA) and the Bureau of Industry and Security (BIS)—conduct vigorous outreach initiatives aimed at educating small businesses about their programs. Additionally, both agencies provide their enforcement agents with training on RegFair issues so they may better respond to small business concerns and provide information about their right to regulatory fairness.
- The Consumer Product Safety Commission (CPSC) recently reviewed its Small Business Ombudsman Program, which it has as a strategic goal, and modified its website to promote small business services, including listing the Ombudsman email address on CPSC’s home page contact information. CPSC also provides compliance assistance at business- and industry-sponsored events held to discuss product safety guidelines and regulatory requirements relevant to products under the agency’s jurisdiction, such as flammability standards related to upholstered furniture.
- EPA uses multiple mechanisms to provide environmental compliance assistance to small business. These include voluntary programs, toll-free hotlines, newsletters, Internet sites, training, pollution prevention education, facility compliance histories, and industry-specific and general environmental guides. EPA has more than a dozen links off its home page to sites offering compliance assistance.
- EEOC provides no-cost outreach and education programs as well as fee-based training and technical assistance. Updated fact sheets, brochures, and enforcement guidance are available through the website and through EEOC’s publication center for no charge. In FY 2004, the agency continued to increase the number of outreach, education, and compliance assistance activities targeted to the small business community, conducting 651 events that reached 20,836 small business representatives and their employees—a 45 percent increase over last year (see sidebar for related success story).
- IRS has undertaken an aggressive compliance assistance program to assist taxpayers and to improve compliance with tax laws. First, it has built a multi-dimensional education program to increase understanding of the tax code and its major provisions. This instruction is targeted at new small businesses, the largest share being started by women and members of ethnic minority groups. All of this material is available at IRS’s comprehensive website, which features 10,000 pages of information

Success Story. The EEOC Seattle District Office partnered with the Washington State Human Rights Commission to present 11 workshops designed to educate small businesses about both agencies’ laws. The workshops were presented in 10 cities in Washington State to more than 250 business representatives. At one workshop, a small business participant learned that posting a job vacancy for a “female” nurse may be a violation of the law and, as a result of the training, decided to change the job announcement and thus avoid a potential charge of discrimination.

and video instruction and receives 1.2 million visitors each month. An Office of Taxpayer Burden Reduction program continues to work on systemic changes to make it easier for taxpayers to comply with the tax code (see sidebar for related success story).

- IRS has an interactive Small Business Tax Workshop that includes all of the materials used in the classroom workshops taught by IRS partner organizations, including streaming video workshops online at www.irs.gov/smallbiz. IRS recently launched a Spanish version of the workshop, which, like the English version, provides startups with the tax “nuts and bolts” of organizing their businesses. Additionally, “Tax Talk Today,” a monthly program about current tax issues and policies, features a panel discussion, questions and answers from viewers, current tax news stories, and tax teasers. The format allows viewers to ask questions via email, fax, or telephone (www.taxtalktoday.tv/).
- The Department of Justice’s Americans with Disabilities Act (ADA) technical assistance program promotes voluntary compliance with the ADA by providing free information and assistance to affected individuals and entities. This program is the principal means by which the Department meets its SBREFA obligation to provide regulatory compliance information to small entities. Each year, the program assists more than 1 million people. A main component of the program is the ADA Information Line, a 24-hour telephone line that provides ADA public information and educational materials. The public may also use the ADA home page to locate Department letters responding to specific ADA-related questions. The website received 1.3 million visitors in FY 2004.
- Each year, the U.S. Office of Special Counsel (OSC) takes part in numerous employer training sessions throughout the country, providing employers guidance on how they can comply with the anti-discrimination provisions of immigration laws. In FY 2004, OSC participated in 55 free training sessions for employers, reaching hundreds of company owners, managers, and human resources personnel.
- The Pension Benefit Guaranty Corporation (PBGC) uses alternative dispute resolution to achieve consensual resolution of issues in controversy, including compliance and enforcement matters.
- DOT agencies provide toll-free telephone assistance and information centers to answer questions on regulatory requirements. For example, the Research and Special Programs Administration’s (RSPA’s) Office of Hazardous Materials Safety answers questions via its Information Center, a toll-free telephone line dedicated to answering questions from entities, including small entities, on regulatory requirements. The FAA provides small entities with a compliance assistance hotline. Other DOT agencies offer interactive assistance, taking questions on certain programs and providing answers through their


Notable: After completing a detailed analysis of more than 300,000 questions that came in through its Referral Mail system during the 2004 season, IRS identified the 26 highest volume question groups and is now creating a website based on these *really* frequently asked questions to help small businesses find the answers they need without having to call the 800 number. The goal is to get the right information to the right people at the right time.

Internet sites. All agencies allow comments on their rulemakings to be submitted via the Internet.

Agency Participation in RegFair Hearings— Criterion 5

Each year, agencies increase their participation at ONO RegFair Hearings. Several agencies, including IRS, DOL, SBA, and now USDA's Food Safety and Inspection Service demonstrated their commitment to send at least one representative to all Hearings to hear small business issues and concerns or to make brief presentations or just to ensure their presence in the small business community. At RegFair Hearings, agencies can market themselves and establish ongoing relationships with trades. Federal agency representatives can also help resolve small business issues on the spot, particularly if regional representation is present.

Some agencies, such as Customs and Border Protection and DOT, endeavor to ensure attendance at those Hearings where an issue related to their agency is on the agenda. After a Hearing site is selected, ONO calls the relevant District Director in the field, who begins the process of putting in place whatever is needed for a specific event, including identifying issues that small businesses will raise and engaging various media and outreach vehicles. Identified agenda issues are then uploaded to ONO's website calendar for all to see in advance of the Hearing. With advance notice, agencies are able to send the most appropriate representative(s) to respond to particular concerns and foster a spirit of collaboration with the small business. Agencies consistently ask for more notice when an issue relevant to them will be on the agenda. ONO has agreed to make advanced planning and notification of agencies a priority—to ensure their continued attendance at its RegFair Hearings.

In FY 2004, more than 20 agencies and sub-agencies attended ONO RegFair meetings (see Figure  for breakdown).

Success story: A small business comment was filed in response to substantial fines received for allegedly incorrect tax ID numbers reported on IRS 1098 and 1099 forms. The company prepares a large number of forms for its clients, and the IRS was slow in responding to inquiries, instead fining the company for incorrect information. However, following testimony at the ONO Hearing conducted by video from Spokane, WA, on 7-26-04, the IRS Taxpayer Advocate Service agreed to authorize the company access to the IRS e-services TIN matching utility so the company could verify taxpayer ID numbers before submitting reports, thereby avoiding fines for incorrect TIN information.

FIGURE 1 BREAKDOWN OF AGENCY ATTENDANCE AT ONO REGFAIR HEARINGS, 2004

Event	Wilmington, DE (10/28/03)	Annapolis, MD (10/30/03)	Sacramento, CA (12/4/03)	Atlanta, GA (12/9/03)	New Orleans, LA (2/12/04)	Stamford, CT (3/25/04)	St. Louis, MO (4/14/04)	Madison, WI (4/27/04)	Yonkers, NY (4/28/04)	Lansing, MI (4/29/04)	Orlando, FL (5/21/04)	Rochester, MN (6/10/04)	Columbus, OH (6/22/04)	Des Moines, IA (6/24/04)	Billings, MT (7/23/04)	Seattle, WA (7/27/04)	Salem, OR (7/28/04)	Phoenix, AZ (9/29/04)
Agriculture	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Food Safety Inspection Service	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Forest Service																		✓
Rural Development																		
Army Corps of Engineers																	✓	
Commerce								✓							✓			
Environmental Protection Agency	✓			✓		✓	✓		✓	✓		✓	✓			✓	✓	✓
Equal Employment Opportunity Commission		✓			✓	✓	✓		✓		✓		✓			✓		✓
Federal Communications Comm.																	✓	
Federal Trade Commission																	✓	
Food and Drug Administration																	✓	
Health and Human Services								✓										
Centers for Medicare & Medicaid Services							✓										✓	
Food and Drug Administration																	✓	
Homeland Security																		
Coast Guard																		
Customs and Border Patrol					✓				✓									✓
Interior																		
Bureau of Land and Mines															✓			
Fish and Wildlife Service																	✓	
Internal Revenue Service	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Labor	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Occupational Safety & Health Administration				✓			✓						✓	✓		✓		✓
Mine Safety and Health Administration																		
Wage and Hour Division									✓			✓		✓			✓	
National Aeronautics and Space Administration																		
Small Business Administration	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
State																		
Transportation					✓													

Agency Notice to Small Businesses of Violations and Right to Comment—Criterion 6

Last year, ONO rated agencies for the first time on the extent to which they informed small businesses of alleged violations and of their right to file comments with ONO. ONO encourages agencies to go beyond simply publishing a toll-free number or posting regulations in the *Federal Register*. Instead, agencies should strive to be accountable for their enforcement actions and cognizant of the need for small businesses to have compliance information up front and in plain form. While more than half of the agencies rated received an “A” in FY 2004 for their efforts to inform small businesses about SBREFA and the Ombudsman’s office, improvement is needed in addressing this criterion.

Examples of Federal agencies that regularly integrated information about regulatory enforcement fairness as part of their interactions with small businesses follow:

- When the USDA’s Food Safety Inspection Service assesses small and very small establishments, it holds an entrance meeting with the owner wherein it explains SBREFA resources and avenues of support. At the exit conference, inspectors leave the management a SBREFA pamphlet, list of contacts, and other information and websites to help them with food safety issues and any impending enforcement actions that may have been discussed during the meeting. The SBREFA contacts and information lists have been effective in linking establishments with university outreach programs and in bringing them into compliance.
- CPSC’s “How We Can Help You” guide provides detailed information on the mission of ONO’s 10 RegFair Boards and their role in evaluating enforcement activities. Information includes the ONO toll-free RegFair number, a toll-free CPSC hotline, contact information for the CPSC Small Business Ombudsman, and CPSC regional offices.
- The Equal Employment Opportunity Commission developed a letter to accompany every charge filed against a small business. The letter advises small businesses of the availability of small business liaisons who provide compliance assistance and help resolve questions about the laws it enforces and about mediation and the charge process. The letter also invites small businesses to visit the EEOC website, which has a special place designed to help small businesses. The letter states that any request for assistance will not adversely affect investigation of the charge filed.
- Community outreach conducted by Commerce’s Community-Oriented Policing and Problem Solving (COPPS) program includes providing guidance on a variety of regulatory issues affecting small entities. Guidance is provided through nationwide industry workshops, town hall meetings, and temporary help lines. A select group of enforcement officers leads proactive compliance efforts in each region, but all agents and officers complete training in community policing philosophies and problem-oriented policing strategies.
- At the start of a facility inspection, the Food and Drug Administration provides detailed information on how to contact the Ombudsman’s Office; the information is also available on the FDA website.

- The IRS publication, *Your Rights as a Taxpayer*, in English and Spanish, states that small business entities can participate in the regulatory process and can comment on IRS enforcement actions by calling 1-888-REF-FAIR. The IRS also distributes a document that describes the SBREFA process and includes the Ombudsman’s website, email address, telephone number, and headquarters address.
- The National Labor Relations Board (NLRB) recently added a link titled “SBREFA” to its website, providing information about the National Ombudsman and the right of small business owners to file comments on NLRB enforcement actions. Included in this information is the toll-free number and website for the Ombudsman’s office.
- In FY 2004, as part of the Department of Homeland Security transitioning, Customs and Border Protection updated legacy Immigration and Naturalization Service (INS) procedures to include a SBREFA Notice with all assessments against parties for violation of immigration law—previously, INS had never complied with SBREFA notification requirements.
- In FY 2004, the FAA embarked on a major project to revise the agency’s Compliance and Enforcement program. A revised order reiterates fairness guidance to agency enforcement personnel and advises them to continue to enclose in every Notice of Proposed Civil Penalty or penalty letter to a small entity the following: a statement informing the small entity of its right to contact the National Ombudsman, the Ombudsman’s phone number and website, notice that the FAA strictly forbids retaliatory acts by its employees, and assurance that small entities can feel confident in expressing their concerns without being penalized.

Responding to Federal Mandates: Small Business Paperwork Relief Act—Criterion 7

The Small Business Paperwork Relief Act of 2002 imposes a variety of requirements on agencies and on OMB as part of efforts to further reduce paperwork requirements for businesses with fewer than 25 employees and to establish a “point person” or contact within the agency for finding out about a regulation. The Act also requires OMB to lead an interagency task force to recommend ways to reduce the paperwork burden on small businesses (see sidebar, next page).

H.R. 327, the Small Business Paperwork Relief Act of 2002

This law institutes a process to make paperwork reduction for small business a serious, ongoing effort. The law:

- Requires OMB to publish an annual list of compliance assistance resources available to small businesses in the *Federal Register* and on the Internet.
- Requires each Federal agency to establish one point of contact to act as a liaison for small businesses and to make efforts to further reduce paperwork requirements for businesses with fewer than 25 employees.
- Establishes an interagency task force to recommend improvements in information collection and dissemination.
- Requires agencies to report on their enforcement actions against small businesses and penalty reductions in such action to Congress and the Small Business and Agricultural Regulatory Enforcement Ombudsman so that they can monitor the regulatory burden reduction efforts of agencies.

These efforts should help alleviate the approximately 8.2 billion hours and \$320 billion annually that it costs businesses and citizens to collect and submit data to the Federal Government.³

ONO is working with OMB and the Office of Information and Regulatory Affairs (OIRA) to help agencies comply with SBPRA, collecting from agencies data reflecting their compliance assistance. The data ONO has received to date and the dollar amount of savings to small businesses being generated as a result of SBPRA. It is noteworthy that for the first time since Federal agencies started reporting through the SBPRA, the total monetary amount of civil penalty abatements, reductions, or waivers exceeded \$1.7 billion.⁴

Notable: In 261 enforcement actions against small entities, the FAA reduced or waived 138 of them, amounting to \$1.29 million in savings for small entities. All DOT agencies together reduced or waived over \$4 million worth of enforcement actions. IRS claims to have reduced or waived \$1.7 *billion* for small entities.

According to the Act, Federal agencies were to have established, for the first time, a baseline by December 31, 2003, and to measure and report against the baseline by December 31, 2004. Each agency was to report to the House Small Business Committee, the House Committee on Government Reform, the Senate Committee on Small Business and Entrepreneurship, the Senate Committee on Governmental Affairs, and the National Ombudsman the following, with a final report to be submitted no later than December 31, 2004:⁵

- Number of enforcement actions in which a civil penalty is assessed.
- Number of enforcement actions in which a civil penalty is assessed against small entities.
- Number of enforcement actions in which the civil penalty is reduced or waived for all and small businesses.
- Total monetary amount of the reductions for all and small businesses.

Beginning in FY 2004, ONO rated agencies on the extent to which they complied with the PRA report requirements. The ratings reflect only whether agencies have submitted the required data to ONO.

Agencies were also expected to establish a task force to study the feasibility of streamlining requirements and enabling electronic collection and dissemination of information. Agency Rule Reviews conducted under the Regulatory Flexibility Act prompt agencies to consider whether particular rules or industry guidance is still needed and whether changes should be made to simplify, reduce, or adjust requirements.

³ Source: Estimate from OMB, as stated in 7-1-03 *SBA News Release*, No. 03-45.

⁴ From FY 2004 SBA Performance and Accountability Report.

⁵ Under SBREFA §223, agencies are expected to have a policy or program to provide for the reduction and, under appropriate circumstances, the waiver of civil penalties for violations of a statutory or regulatory requirement by a small entity. Agencies may also consider ability to pay in determining penalty assessments on small entities. [Measurable data will likely not be available until at least the second quarter of FY 2005.]

Special Initiatives and Best Practices of Federal Regulatory Agencies

ONO helps foster an overall environment of success for small businesses by engaging Federal agencies in fully considering the impact and implications of regulatory enforcement actions. The following initiatives illustrate “best practices” by Federal agencies in addressing their SBREFA responsibilities and in changing their approaches to working with small businesses. These initiatives represent some of the positive changes occurring in the Federal regulatory environment.

- EPA manages a National Environmental Compliance Assistance Clearinghouse (www.epa.gov/clearinghouse) as a guide to compliance information on the Internet. This site offers comprehensive links to EPA environmental compliance assistance materials, as well as materials from all 50 States and other organizations. The Clearinghouse contains many features that allow small businesses to interact directly with EPA and improve communication and collaboration among compliance assistance providers. It also contains information on current EPA compliance and enforcement priorities that may impact small business. Through this platform, EPA funds State-by-State environmental compliance information of interest to small business (www.envcap.org/).

Notable: In 2005, the National Compliance Assistance Providers Forum, the National Pollution Prevention Roundtable, and the Performance Track Participants Association are joining together to showcase nationwide innovations in pollution prevention, compliance assistance, and environmental leadership (www.environmentalsummit.org). This effort is part of EPA's continued coordination of compliance assistance programs both inside and outside the Federal Government.

- EPA distributes a newsletter for compliance assistance providers that focuses on a theme or topic of interest to the compliance assistance provider community. Entitled *Compass*, the newsletter includes a calendar of upcoming events and a “hot news” section to highlight new policies, guidance, tools, events, or reports related to EPA’s compliance assistance program. EPA plans to publish the newsletter three times a year.
- EEOC has designated Small Business Liaisons in its field offices who provide compliance assistance, serve as a customer-referral resource, and help small employers with concerns about discrimination charges. Small businesses can raise concerns with liaisons about the length or scope of an investigation or any other matter involving the handling of a charge; liaisons have the knowledge and authority to provide an effective response.
- The FDIC has a compliance assistance employee available for each of its regulated institutions. At the regional and territory office levels, senior staff are assigned to a specific bank as the single point of contact for that institution. In addition, subject matter experts are available at the regional and Washington offices to answer questions in more technical areas. The FDIC also has a Banker Outreach Program

where senior FDIC staff contact and meet with bank management to discuss new technologies, product innovations, and recent statutory changes.

- The IRS participates 100 percent of the time in RegFair Hearings and meetings and not just when issues related to its mission are presented in testimony. The Hearings provide an opportunity both to resolve any issues that do come up, or to promote its Taxpayer Education and Communication products and services. DOL, SBA, and FSIS also regularly participate in ONO RegFair Hearings through field office representation, which oftentimes allows an immediate response by the Federal agency to the issue raised.
- On June 2, 2004, the Federal Communications Commission (FCC) instituted a new systematic, agency-wide “compliance guides” program to assist small entities. The guides are focused on explaining to small entities, in plain language, what the FCC requires of them with respect to complying with new FCC rules. Guides are posted on the FCC website at <http://www.fcc.gov/ocbo/complianceguides.html>. This program goes beyond the former Fact Sheets program in that it tailors guidance specifically to small entities, which the FCC chairman considers “an essential part of the digital migration and the national broadband future.”

III. Hearing the Voice of Small Business: Comments Filed


In FY 2004, ONO received many comments through its RegFair Board members' advocacy efforts on behalf of the small businesses in their regions. Through Hearings and Roundtables, trade association meetings, small business forums, and other avenues of outreach, ONO heard the concerns of small businesses across the country. This section examines several of these recurring themes and perceptions, which include the high cost of compliance, costly agency errors, confusing and changing regulations, overly rigorous requirements, and a generalized fear on the part of small businesses of doing the wrong thing.

Several of these concerns were reflected in testimony at ONO Hearings and Roundtables and in actual comments received from small businesses in FY 2004. Small business owners expressed concerns not only about difficulty in complying with regulations but about the extraordinary effort it takes to resolve conflicts stemming from misapplied or overly technical requirements—effort that costs them valuable time with their businesses. Small businesses still

“It’s nice to have a friend in government instead of an adversary in government, and the Office of Advocacy and the National Ombudsman’s Office has been nothing but a friend to small businesses that we have referred to them.”—Leo Blais, RegFair Board Region I Chair.

complain about excessive audits and inspections and of spending too much time on administrative tasks related to regulation. Cost is a major issue as well, and is often the reason why small businesses must get embroiled, however time-consuming, in the “back and forth” of responding to the Federal Government. Long delays when trying to correct a problem are a common concern. ONO continued to work in FY 2004 to help Federal agencies better understand the effects of their enforcement actions on small businesses, given small companies' limited resources and vulnerability to costly penalties and time-consuming paperwork. Indeed, sometimes their very survival is at stake. Examples of concerns heard in FY 2004 are described in the sections that follow.

The High Cost of Compliance

The cost of regulatory compliance is high. In fact, Federal regulations alone cost small businesses with fewer than 20 employees \$7,000 a year per employee, 60 percent more per employee than it costs larger firms to comply with Federal regulations.⁶ Also, small firms spend twice as much on tax compliance than do larger firms (see Figure ). When subject to audits or other regulatory processes, small businesses generally must take time, energy, and attention away from their businesses in order to comply. Unlike large companies that can afford to hire staff to respond to audits and inspections, many small business owners must take on this additional burden themselves. Said one commenter in testimony at the New Orleans Hearing: “Being a small business makes it virtually impossible to handle this matter in any other financially sound way.” He also noted that by handling the matter on his own, he is losing time and profits.

⁶ Interview with Tom Sullivan, SBA’s Office of Advocacy.

Figure [redacted]. Cost of Federal Regulations By Firm Size (Per Employee, All Sectors)

Type of Regulation	Cost per Employee for Firms with:	
	< 20 Employees	500+ Employees
All Federal Regulations	\$6,975	\$4,463
Environmental	\$3,328	\$ 717
Economic	\$1,616	\$2,485
Workplace	\$ 829	\$ 698
Tax Compliance	\$1,202	\$ 562
Source: <i>The Impact of Regulatory Costs on Small Firms</i> . W. Mark Crain and Thomas D. Hopkins, Office of Advocacy, August 2001.		

The Ombudsman's Office works hard to counter these costs for small businesses. According to a recent *ONO Economic Impact Analysis* prepared by Jack Faucett Associates, ONO saved small businesses at least \$19.7 million in 2003.⁷ Further, interviews with business owners and trade associations conducted as part of the analysis indicate that small businesses place an annual value on ONO's services at between \$93 and \$250 per business, or \$65 million to \$130 million total.⁸ Yet the impact in the form of direct savings to small business—as a result of comments filed, the rating of Federal agencies, and RegFair events, where success stories and access information is shared—is such that each dollar spent yields a return of between \$46 and \$124 in small business benefits (see **Figure [redacted]** below).⁹ Accessing the services of ONO can be a strategic decision for a small business seeking relief from excessive regulatory enforcement burdens. **[need to clarify table results with j faucet]**

Figure [redacted]. Savings to Businesses as a Result of ONO

Activity	Impact	Range	
		Low	High
Small Business Comments	Direct savings business sector	\$236,839	\$236,839
		\$590,000	\$590,000
Rating Federal Agencies	Enforcement environment	\$19,710,240	\$98,600,000
RegFair Events	Value to small business	\$65,100,000	\$130,200,000
Total Impact		\$85,637,079	\$229,626,839
Cost-benefit ratio		46	124

The enforcement environment frequently presents difficult options for Federal agencies as well as the small businesses they are charged with regulating. For even when government agencies offer a settlement or reduced penalty, the modified amount may still be relatively “expensive” for a small business. Additionally, small businesses are often unaware of their options or are afraid to seek recourse in their interactions with government, even when they

⁷ Economic Impact Analysis Study, Jack Faucett Associates

⁸ Ibid.

⁹ Ibid.

feel penalties are unreasonable. In an online comment filed by a paint company fined for a hazardous materials violation, the commenter noted, “My argument is not one of innocence, but of what is reasonable and fair.” He continued by noting that he was afraid to ask for a Hearing, believing it would subject his company to the full guideline penalties, which had been reduced but were still substantial to him. Another commenter said by email that he did not protest the settlement with FAA (a reduced fine for a freight shipping error) at the time because he “did not know there was any way to do that.” For its part, the government feels it has made a good faith effort to compromise, while the small business still feels mistreated and, in this case, was forced to lay people off to compensate for the fine.

ONO can work to bridge the divide, as it did several times in FY 2004 (see sidebar for success story).

Costly Agency Errors

Agency errors can “compound” hardship for small businesses, especially when resolution is unnecessarily delayed. These errors and delays are not only frustrating but can be extremely costly. ONO can be helpful in stimulating the stasis that occurs between small businesses and the Federal agencies.

An aviation company complained of lost paperwork relating to a lien on an airplane, which was preventing its sale. According to his comment, the lien was not recorded by the FAA due to a technicality relating to one sentence requiring that a copy be returned to the SBA after release of the lien. With ONO’s help, the lien was released by the FAA and the “black hole” into which documentation sometimes falls was illuminated.

In another case, ONO helped facilitate something as simple as getting an address change recorded, a seemingly small matter, which actually helped *save* a business (see sidebar, next page, for success story).

Success Story: A farming business, begun in Canada in 2000, lost money and was sold in 2002. The owner had a Canadian tax liability that he was waiting to calculate and pay, when he received notice from the IRS that he had not filed his U.S. taxes properly—even though he lost money on the venture. He submitted a comment to ONO on November 25, 2003, which was forwarded to IRS’s Taxpayer Advocate Office. They determined that reasonable cause had been established and the penalties were abated. The small business’ account now shows a zero balance in money owed to the IRS.

Confusing and Changing Regulations

Small businesses sometimes feel that the rules they must follow are challenging to understand, which leads to difficulty in complying and to inadvertent non-compliance. The resulting confusion not only causes non-compliance, but sometimes results in unpleasant confrontation with the regulatory agency seeking merely to enforce the rules. To a small business—constrained by limited time and resources and the daily stresses of business survival—having to be accountable for complying with a rule they do not even understand is the last straw. The resulting hardship often engenders resentment and anger toward the regulatory agency and a general feeling that the agency is nit-picking or being capricious in enforcing regulations. Said one commenter, “I can say from experience with [Federal Government] representatives that they hold themselves above the law and feel that they can make the rules up as they go along.”

ONO intervention can help parties arrive at a mutual understanding even when contentious issues have created a somewhat hostile environment. The following describes one high-profile example from FY 2004:

When the State boards of pharmacy received a letter from the FDA’s Center for Veterinary Medicine in April 2004, announcing a tightening of the guidelines on compounding of drugs for use in animals, the American Pharmacists Association (APhA), along with the International Academy of Compounding Pharmacists (IACP) and the National Community Pharmacists Association (NCPA), immediately wrote a joint letter in reply. They strongly urged the FDA to retract *its* letter, calling the proposed guideline and related enforcement action unreflective of the state of the practice and saying it would “threaten the health and safety of thousands of animal patients.” The letter also said: “Perhaps most concerning about the agency’s sudden change in interpretation and enforcement of 21 CFR 530.13 is the lack of prior communication with the pharmacy and veterinary professions and State regulatory agencies.”¹⁰

Success Story: A pharmacy company filed a comment regarding delays in payments from Medicare occurring as a result of an address change. The government agency that needed to record the address change in its records failed to do so, even after repeated requests. This prolonged unresponsiveness resulted in the small business owing a debt of \$500,000, which it could not pay. This debt also interfered with patient care, as the small business could not afford to continue serving patients. Once in receipt of the comment, ONO forwarded it to the Center for Medicaid and Medicare Services, which responded in 30 days that it would assign a Benefits Administrator to expedite the pharmacy company’s address change and keep him in business.

¹⁰ Letter from APhA, the International Academy of Compounding Pharmacists, and NCPA to Gloria J. Dunnavan, Director, Office of Compliance, Center for Veterinary Medicine, FDA, April 16, 2004.

"We were very pleased to see the FDA's responsiveness once contacted by ONO and Advocacy."—Leo Blais, *Region I RegFair Board Chair* (interview, 1-18-05).

The three organizations that wrote the letter represented thousands of compounding pharmacist members nationwide. And although the initial letter was not successful with FDA, a massive comment-filing campaign with ONO, spearheaded by the RegFair Board Chair in Region I succeeded in securing a meeting with members of ONO, Advocacy, FDA, and small businesses. To its credit, the FDA expressed its desire to be responsive and its

commitment to "keeping the lines of communications open." In November 2004, the FDA decided to review the guidelines, subsequently revising them to reflect the interests of small pharmacies.

Sometimes the feeling is the regulatory agency did not try hard enough to "get the word out." In the case of a small coating manufacturing plant, the owner commented that he did not knowingly violate EPA's architectural coating regulation but that insufficient public outreach was conducted to make him aware of it. For their part, Federal agencies, including EPA, acknowledge the need and their desire to work more cooperatively with ONO and small businesses to ensure representation at Hearings and to help the small businesses they regulate to better understand and stay abreast of requirements.

Overly Rigorous Requirements

Small businesses sometimes complain that Federal agencies are overly exacting in their application of requirements (e.g., instituting fines for improper forms, enforcing unnecessary training requirements for personnel, etc.) The rigor demanded by some agencies with regard to their regulations can shut out the little guy to where the cost of compliance effectively puts them *out* of business. It is not surprising then that frustration builds, especially when business is slow and cargo is stuck on the docks, as was the case with several commenters whose goods were randomly intercepted for inspection and then held up in a protracted process.

One commenter—a gourmet food importer and distributor—testified at the Yonkers, NY, Roundtable in 2004 that for his company, "the delay of a few weeks results in lost revenues and shelf life and makes it that much more

Success Story: At the Yonkers, NY, Roundtable on April 28, 2004, a gourmet food importer and distributor in The Bronx, New York City, complained of lengthy government inspections at ports of entry after 9/11, jeopardizing the perishable gourmet cheeses and other specialty foods it imports. According to the company's vice president, reviews that used to take a few days were taking as long as three weeks when a ship's entire cargo was x-rayed. And while he recognizes the importance of security measures in a post-9/11 world, he still believed that better training of inspectors on the products they examine would help prevent needless delays. The small business in this case was pleased that its grievances were listened to and credits ONO for helping facilitate a productive exchange. DHS later wrote the company that it was trying to expedite shipments and to give preferential treatment to perishable items, and that the problems caused by inexperienced inspectors have diminished as they have learned on the job.

difficult to manage inventory levels.” He attributed some of the delays to new customs inspectors and testified that a shipment of Italian cheese that his company had imported for years had to be sent back to Italy because a customs inspector was unfamiliar with it and refused to issue a release without a fuller description. Although frustrated, the commenter in this case felt satisfied that his grievances were heard through the vehicle provided by ONO (see sidebar).

Sometimes this frustration turns to anger and feelings of hopelessness when a small business feels out-muscled by a bureaucracy that seems more threatening than conciliatory. One commenter, who was told he had 45 days to pay his current maintenance fee or have his EPA pesticide registration suspended, angrily compared the government’s actions to “extortion,” asking whether he had any recourse, or if he should “just close his doors and let another small business die.” The commenter in this case runs a family rodenticide business with gross annual sales of less than \$47,000. The current registration fee has climbed to \$4,100 (from \$975 in 2001), which, according to the commenter, approaches 10 percent of his revenues. Through ONO, the government agency—in this case, EPA—responded that since this complaint concerned an annual fee rather than a regulatory matter, it would refer the comment to another EPA office, which has yet to respond. Says the commenter: “Their attitude seems to be, ‘you’re a small company, we don’t care about you.’”¹¹

Small businesses often feel they are being targeted, when it is more a matter of being held to the “letter of the law” in terms of regulatory enforcement. Unfortunately, such rigor takes a heavier toll on the small businessperson, who sometimes feels betrayed and marginalized by a system he does not know how to navigate either to satisfy the requirement in a manageable way or to get the help needed to work out an alternative. Either way, a feeling is created of “no one really cares.” One small business, new to importing and unfamiliar with all required procedures, asked ONO’s help to keep her \$12,000 worth of earthenware plates (a “small” import) from being destroyed. Upon being notified that the shipment had been detained, the commenter did not receive a response from the government office she called asking how to handle the detention. When she did receive a reply, it was unhelpful, leading her to observe, “It was like she didn’t have time to deal with such a small shipment.”

¹¹ Dean interview (R&C Dean, Inc., Dean’s Rat and Mouse Bait), 2-9-05.

IV. ONO Outreach: Increased Use of SBA Field Offices, RegFair Boards, and Technology

Regional RegFair Boards: ONO's Eyes and Ears Across the U.S.

ONO calls its 50 RegFair Boards the “eyes and ears” across the country for ONO. They are the main avenue through which ONO is able to learn of particular regulatory enforcement concerns of small business in various localities and to ensure that those concerns are heard, as appropriate, by the Federal agencies involved. RegFair Board members are small business people themselves, running a wide variety of small business enterprises, from Christmas tree farms and real estate companies to data management and professional development firms. In some cases, the board member's business engenders a personal commitment to a particular struggle (see sidebar).



It is also through RegFair Board members that greater access is gained to trade and professional associations representing blocks of small businesses with common concerns and interests. By working with trade organizations and giving them a point of contact in the field—who is not a Federal agency but a small business like the ones they represent—ONO RegFair Board members provide communication channels for productive problem solving. For they can both direct small businesses to ONO for redress of their regulatory enforcement concerns as well as report directly to ONO on behalf of those small businesses. Small business concerns often become known to Board members through outreach and cooperative work with SBA field offices in their regions. Communication works the other way, too, as RegFair Board members continually work to raise awareness among small businesses in their regions of what ONO can do to help them.

Activity Report: New Mexico

A Region VI Board member, who also owns a gallery and framing business in Albuquerque, New Mexico, is working to support more than 100 artists and craftsmen pursuing change in an IRS law that states that if an artist donates his artwork to a charitable organization, the artist can only deduct the costs of materials used in the artwork, rather than the appraised value of the work itself (from Region VI activity report).

Board members engaged in many activities last year designed to spread the word about ONO and to elicit concerns from its constituents. Much work was also done in tandem with SBA field offices, including local district offices, Small Business Development Centers (SBDCs), and SCORE to raise awareness of ONO's services among small business entities. ONO knows that its outreach efforts will be even more effective if it continues to engage and support the SBA field office structure in marketing Ombudsman activities. In FY 2004, RegFair Board members met with SBA Regional District Directors and invited them and Regional Administrators to attend and provide comments at RegFair Hearings, thus not only broadening ONO reach and inclusiveness but aiding efforts to more effectively integrate all

of SBA's work in the field on behalf of small business concerns. RegFair members also made effective use of material from other SBA program offices to inform small businesses about other SBA services. A Model Bill Initiative developed by Advocacy—a State bill that emulates the Federal Regulatory Flexibility Act—was promoted by particular board members in their States to get the model legislation replicated at the State level.¹² The value of networking with NFIB, chambers of commerce, and business leaders at the Federal, State, and community levels is exemplified through the achievements of RegFair Board members.

The great variety of outreach activities initiated by RegFair Board members in FY 2004 includes the following:

- Publishing articles in local papers and media outlets, describing ONO, RegFair Boards, and the comments process (always including the ONO website, of course).
- Meeting with local chambers of commerce to discuss ways to inform and educate chamber membership on how ONO can assist them.
- Meeting with county commissioners and congressional delegations with regard to the RegFair process.
- Initiating one-on-one meetings as well as Roundtables with heads of small businesses and government representatives to share and discuss issues and concerns.
- Conducting large mailings to groups and individuals, expanding reach through mailouts to trade associations with large memberships.
- Delivering presentations about ONO and the RegFair process to local governmental organizations, citizens groups, business advocacy groups, and SBA District Offices.

Activity Report: Reaching Out to Congressional Delegations

Increasing access includes reaching out to congressional delegation staffers. At an Idaho congressional delegation meeting in Region X, for example, staffers were made aware of reporting and potential resolution opportunities offered by ONO with regard to RegFair issues. A common confusion was clarified with regard to ONO versus Advocacy issues (i.e., who does what), and a follow-up meeting scheduled to ensure that congressional staffers access the Ombudsman as their resource for solutions to RegFair issues in congressional districts (From Region X FY 04 RegFair Activity Report).

Activity Report: Texas

In Region VI, Joe Shepard, Region VI Chair, held meetings with U.S. Senators John Cornyn and Kay Bailey Hutchinson, and Texas senator Troy Fraser, to inform and educate them about the assistance that ONO can provide to Texas small businesses (from Region VI activity report).

- Securing personal meetings with high-level elected officials to discuss small business regulations and legal reform issues.

RegFair Board members held five meetings in FY 2004, several of these utilizing conference call technology. In each case, the Ombudsman chaired conference calls with either regional RegFair Board chairs or with members to learn of small business regulatory enforcement concerns and new outreach methods in the different regions. An in-person meeting for Board member training was held in May in advance of the National RegFair Hearing in Orlando, FL.

¹² Interview, Thomas Sullivan, Office of Advocacy.

ONO RegFair Hearings: Facilitating the Discussion

At least one Regulatory Fairness Enforcement Hearing is held in each of the 10 Federal regions. Statutorily required by Congress, RegFair Hearings are designed to receive and publish, as appropriate, public testimony regarding specific excessive regulatory enforcement actions by Federal agencies. Less formal Roundtables, designed to inform trade associations and chambers of commerce of their constituents' rights to file a formal comment about excessive Federal regulatory enforcement are held on a regional basis, like Hearings. Effective in 2005, ONO will refer to RegFair Hearing and Roundtables both as "Hearings." What is important is common to both—that is, providing a forum for giving a voice to small business and for fulfilling President Bush's edict for government to be more customer-oriented.

In FY 2004, ONO held 18 Hearings and Roundtables, exceeding its goal of 15.¹³ The past seven years has witnessed a trend toward a greater number of Hearings and Roundtables held each year across the country (see Figure). At these events in FY 2004, 86 people presented testimony, representing the interests of thousands of small businesses. ONO also held a national level RegFair Hearing—the first of its kind—in Orlando, Florida, on May 21. The Hearing was held in conjunction with the "SBA Expo '04: Celebrating National Small Business Week" conference. Testimony from small business owners nationwide was heard, and members of the 10 RegFair boards presented comments regarding compliance issues from small business owners in their respective regions.

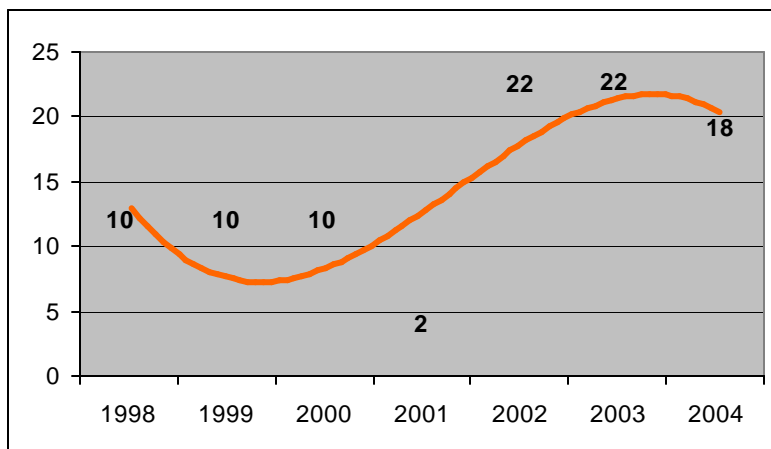


Figure . Number of Hearings by Fiscal Year-1998 - 2004

[note: re bar chart v. trend line, I thought the trend line was more notably visibly "upward," but I can change it if you like—JCE]

Regional Hearings (H) and Roundtables (R) held in FY 2004:

Wilmington, DE (H), 10-28-03
 Annapolis, MD (R), 10-30-03
 Sacramento, CA (R), 12-4-03
 Atlanta, GA (H), 12-9-03
 New Orleans, LA (R), 2-12-04
 Stamford, CT (H), 3-25-04

Lansing, MI (R), 4-29-04
 Orlando, FL (National Hearing) 5-21-04
 Rochester, MN (H), 6-10-04
 Columbus, OH (H), 6-22-04
 Des Moines, IA (H), 6-24-04
 Billings, MT (H), 7-23-04

¹³ ONO FY 2004 Goal Scorecard.

St. Louis, MO (H), 4-14-04
 Madison, WI (R), 4-27-04
 Yonkers, NY (R), 4-28-04

Seattle, WA (H), 7-27-04
 Salem, OR (R), 7-28-04
 Phoenix, AZ (H), 9-29-04

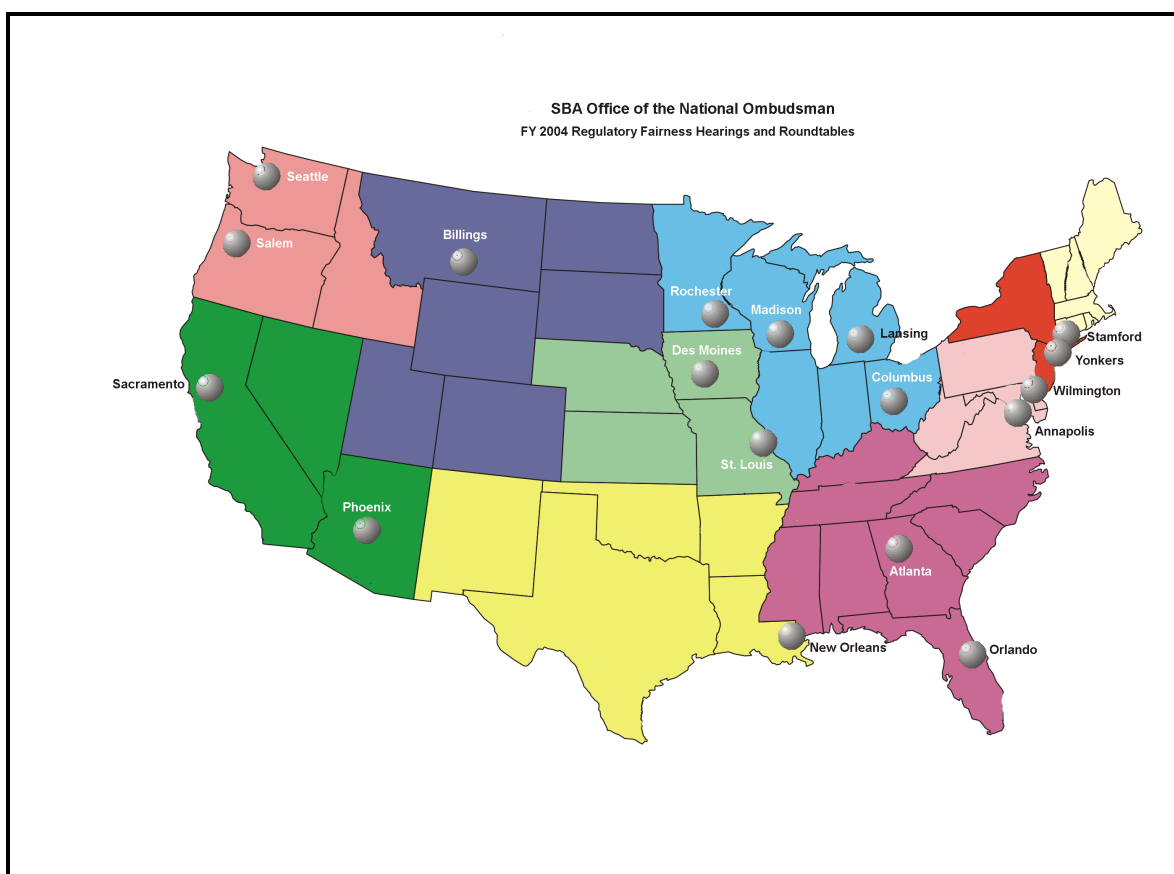


FIGURE __. **HEARINGS AND ROUNDTABLES HELD IN FY 2004**

Reaching Out and Following Up

In FY 2004, ONO reached roughly nine million small businesses with its message through trade associations, chambers of commerce, newsletters, and media outlets. In addition to hosting Hearings and other interactive events, ONO used its informative website and extensive media outlets to spread the word and to reinforce its partnerships with Federal agency decision-makers and the small business it serves.

ONO promotes its website as the most efficient means of receiving comments and the best way to expedite their delivery to agencies. A tracking system on the website allows commenters to track their comments and to receive notice once they have properly filed and submitted their information. Also, the website is chockfull of information needed both by small businesses and Federal agencies, including links to agency compliance assistance activities, information on the Small Business Paperwork Reduction Act and a wealth of other resources.


ONO also leveraged SBA District Office operations to conduct a host of outreach activities, including publishing dozens of articles in local and specialized media and trade publications and securing radio and television interviews to promote ONO's services. In FY 2004,

articles about ONO appeared in dozens of publications, including Web and E-Blast communications. Additionally, more than 20 radio and television interviews were conducted with the Ombudsman and with ONO staff. Collectively, these radio, newspaper, Internet, and television communications and media events had a potential market of nearly 20 million (see Appendix A).¹⁴ As awareness and education continue to grow, so will ONO's effectiveness,

Success with Trade Associations

ONO's success stories for FY 2004 largely emanate from its close ties to small business trade and professional organizations. ONO's relationship with the trades is a key to its success.

“ONO has leveraged good relationships with trade associations. They have been very effective and very aggressive at outreach, seeking to have a presence outside of Washington, which is important—also, I think they’ve really done a lot with very little resources” (*interview, Giovanni Coratolo, Director of Small Business Policy for the U.S. Chamber of Commerce, 1-04*).

ONO continues to work with national trade organizations such as the National Federation of Independent Businesses and the National Business Association, to encourage them and their State directors to get the word out to their membership about ONO and to file comments on their members' behalf (see Figure ). This has been an effective avenue and in one case resulted in 90 comments filed in reaction to a single regulatory agency, spearheaded by the initiative of one board member (see sidebar, next page).

Activity Report: Reaching Out—Way Out

In FY 2004, Administrator Barreto and Ombudsman Barrera reached out to small businesses across the country through a 50th Anniversary “tour,” visiting towns and cities across the country to hear what small businesses were thinking. Several such events included discussions of how small businesses can redress their concerns related to unfair regulatory enforcement.

At a 50th Anniversary Luncheon in Albuquerque, New Mexico, the 350 people in attendance represented thousands more from the U.S. Chamber of Commerce, American Indian Chamber of Commerce, ACCion, and other groups. SBA Administrator Barreto was the keynote speaker. Attendees were surveyed on such matters as “what do you think is the most important type of regulatory issues facing small businesses today?” (from Region VI activity report). [Note: no answer to this question was given in activity report; however, based on other info, it would likely be “taxes and health care,” two issues which I felt were not germane enough to ONO to include—JCE]

¹⁴ The total readership/audience numbers shown in the Appendix A Media Outreach matrix come from “Arbitron, Inc.,” which ranks radio stations, cable companies, advertisers, etc., by number of listeners—comparable to the Nielsen ratings for television.

Figure 1. Small Business Associations Reached in FY 2004

Location of Hearing, Roundtable or Emerging Market Session	Organizations Represented	Membership Represented
Wilmington, DE (10-28-03) Hearing	National Federation of Independent Businesses PA-DE Cleaners Association	964
Annapolis, MD (10-30-03) Roundtable	Maryland Chamber of Commerce State of Governor's Office of Business Advocacy and Small Business Assistance	900
Sacramento, CA (12-04-03) Roundtable	Sacramento Black Chamber of Commerce Sacramento Metropolitan Chamber of Commerce Sacramento Hispanic Chamber of Commerce	3,000
Atlanta, GA (12-09-03) Hearing	The Carpet & Rug Institute Hispanic Construction Chamber of Commerce Maddox Industries	265
New Orleans, LA (2-12-04) Roundtable	Jefferson Chamber of Commerce National Federation of Independent Businesses Hispanic Chamber of Commerce	5,300
Stamford, CT (3-25-04) Hearing	CT Small Business Development Center SACIA - The Business Council of Fairfield Co. SBDC - Stamford, CT Mayor's Office of Economic Development	149,133
St. Louis, MO (4-14-04) Hearing	Home Builders Association of Greater St. Louis	1,150
Madison, WI (4-27-04) Roundtable	University of Wisconsin-Extension Wisconsin SBDCs City of Madison and Dane County WI Technical Colleges WI Technology Council WI Supplier Development Council WI Workforce Development Council WI Biotechnology & Medical Device Associates WI SCORE Chapters IMPACT 7, Inc. WI Business Development Finance Corporation	77,900

Figure 1. Small Business Associations Reached in FY 2004

Location of Hearing, Roundtable or Emerging Market Session	Organizations Represented	Membership Represented
Yonkers, NY (4-28-04) Roundtable	Westchester Hispanic Chamber of Commerce Hunts Point Economic Development Organization The Westchester SBDC The Yonkers Economic Development Corporation The Bronx Women Business Center African American Chamber of Commerce of Westchester The National Minority Business Council Empire State Development Corporation Yonkers Hispanic Chamber of Commerce Mexican Chamber of Commerce	20,000
Lansing, MI (4-29-04) Roundtable	Michigan Restaurant Association SBTDC - Michigan Michigan Association of House Builders Detroit Regional Chamber of Commerce Michigan Business Professional Association Michigan Economic Development Corporation Small Business Association of Michigan Michigan Soft Drink Association	62,331
Rochester, MN (6-10-04) Hearing	SBDC Metropolitan Economic Development Association (MEDA)/Procurement Technical Assistance Center (PTAC)	50
Columbus, OH (6-22-04) Hearing	Main Street Business Association Cincinnati Women's Business Chamber Columbus Urban League, Inc.	1,830
Des Moines, IA (6-24-04) Hearing	Iowa SBDCs State of Iowa Citizens' Aide/Ombudsman Business and Industry Group (North Iowa)	19,000
Billings, MT (7-23-04) Hearing	Montana Chamber of Commerce Billings Area Chamber of Commerce Big Sky Economic Development Authority	131,897

Figure . Small Business Associations Reached in FY 2004

Location of Hearing, Roundtable or Emerging Market Session	Organizations Represented	Membership Represented
	Montana Business Incubator SBDC - Billings	
Seattle, WA (7-27-04) Hearing	Gladys Gillis American Civil Liberties Union of Washington Independent Business Association Washington State Society of Enrolled Agents SCORE Chapter #55 Seattle Chinese/Chinatown Chamber Washington State China Chamber of Commerce Washington Agricultural Legal Foundation	64,777
Salem, OR (7-28-04) Roundtable	Idaho Anti-Wolf Coalition, Inc. Oregon Certified Minority, Women and Emerging Small Business Oregon Restaurant Association Portland Business Alliance SCORE Chapter #460 Oregon Independent Auto Dealers Association Associated Builders and Contractors, Inc. Northwest Auto Trade Association	7,218
Phoenix, AZ (9-29-04) Hearing	National Federation of Independent Businesses Arizona SBDC Arizona Small Business Association Greater Phoenix Black Chamber of Commerce Arizona Hispanic Chamber of Commerce SCORE NAWBO	43,866
Total Small Business Reached		589,581

Trade association representation at Hearings and Roundtables is an effective way to reach many more small businesses (see sidebar for example). ONO will continue to use this effective avenue as an efficient means of optimizing its outreach to small businesses.

ONO Outreach to Agencies

ONO continued to elicit ideas from Federal agencies to improve the SBREFA comment process and increase its efficiency and outreach. ONO met its FY 2004 goal of holding two interagency meetings to both elicit agency feedback and inform agency representatives who are the small business contacts within their organizations about changes and expectations. The meetings were held in November 2003 and in March 2004, both with substantial attendance. At the November 2003 meeting, more than 60 federal agencies were represented, an approximate 50 percent increase over last year, reflecting a trend toward greater Federal agency participation with ONO's mission. Ombudsman Barrera spoke of the importance of RegFair Hearings and agency attendance and of the need for all agencies to get on board with having written non-retaliation policies. The Director of OIRA-OMB spoke at the March meeting, which SBA Administrator Barreto also attended. Topics included establishing a regulatory enforcement baseline, assessing agency progress on written non-retaliation policies, SBPRA burden reduction, and compliance assistance reports. A focus session was also held to obtain agency feedback.

ONO continued its great relationship with the Office of Advocacy in FY 2004, both offices seeing the beneficial results for small businesses as a result of a Memorandum of Understanding (MOU) signed by Ombudsman Barrera and Chief Council Sullivan in FY 2002. The MOU

Activity Report: Leveraging Associations

Beginning in February 2004, ONO began receiving comments as the result of the Food and Drug Administration (FDA) issuing a ruling prohibiting the compounding of drugs for use in animals without giving affected independent pharmacies a chance to comment. By June, ONO had received 27 comments from affected small pharmacies, mainly as a result of efforts by RegFair Board Region I Chair, who is also a leader with the International Academy of Compounding Pharmacists. In early June, the Academy met in Washington, DC, and invited Ombudsman Barrera and the Region I Chair to address their convention. As a result ONO received an additional 60 comments on the issue. Happy ending: On November 10, 2004, FDA advised that it would review the rules, which have since been revised to reflect the interests of small pharmacies.

Activity Report: Leveraging the Trades

The 75 attendees of a Northside Canal company annual stockholders meeting in Region X represented approximately 8,500 people, through memberships in trade associations and other groups. These included the American Falls Irrigation District, Burley Canal Company, and water users from Idaho, Oregon, Wyoming, and Utah. Also, two Federal Government agencies—the U.S. Departments of Interior and Reclamation—presented information on the regional drought. A RegFair presentation was given and contact information shared with directors of the groups represented (from Region X activity report).

describes a sharing protocol to ensure that small business complaints, comments, and concerns are handled by the appropriate office. A potential for overlap stems from the offices' common goal of fostering a more small business friendly regulatory environment.¹⁵ Both offices have helped to clarify their roles to small businesses through information distributed by ONO at RegFair Hearings. This reciprocal arrangement ensures that no matter how a comment or concern comes in or to whom, it is directed to the right office for resolution.

"We are finishing up the most successful year in SBA history, and we know we cannot do this by ourselves—which is why we have this great network of partners in the Federal agencies. From small businesses nationwide, we hear how much they appreciate what you're doing to ease the load on them. While we have a ways to go, we appreciate the progress that's been made."—SBA Administrator Hector Barreto, ONO Interagency Meeting, 12-10-04.

"Outside the beltway, there is no reason why anyone needs to know the legal distinction between our two offices. . . . We have a behind-the-scenes process in place where regulatory issues are funneled to Advocacy, and enforcement issues to the Ombudsman—wherever they arise. Regardless of which face it is, it is the U.S. Government and it is seamless to outsiders. Agencies are responding in a top-down manner to the President's message that small business matters."—Tom Sullivan, Chief Counsel, SBA Office of Advocacy

Agency Outreach to Small Businesses

Federal regulatory enforcement agencies continue to enlarge efforts to connect with small businesses and apprise them of rules, regulations, and helpful resources. Many agencies have increased outreach to small business entities through their websites. More agencies have identified "point people" responsible for interacting with the Ombudsman's Office. Only a few years ago, that was more the exception than the rule and is evidence of progress. A growing number of agencies have staff dedicated to shepherding comments received from ONO through their own systems for a prompt, effective response.

"I think the fact that the Ombudsman has been persistent with Federal agencies, who in turn have been receptive to helping small businesses, is providing both a carrot and a stick to making great progress. There is no doubt that the aggressiveness of Ombudsman Barrera has made a big, big, difference in the way that agencies are dealing with small businesses across the country—and I've been involved with regulatory compliance issues since 1997."—Tom Hicks, Small Business Regulatory Compliance Advisor for Department of Labor.

¹⁵ Advocacy has authority to review agency policies with regard to how well they take small entities into consideration as part of rulemaking procedures. ONO, of course, has the authority to intervene on behalf of small businesses subjected to unfair enforcement actions by Federal regulatory agencies, and to rate agencies on how well they respond to small business concerns.

Several agencies increased their outreach efforts in FY 2004. For example:

- The EEOC St. Louis District Office formed a partnership with the Joplin, Missouri, Chamber of Commerce and the Small Business Development Center at Missouri Southern State University (MSSU) to offer free training sessions for the local small business community. The main focus of the initiative is to provide free training courses for local small business owners and entrepreneurs. Participants attending the session expressed their appreciation that a government agency would “spend the time and money” to assist the small business owner in more remote areas.
- An IRS online “rate the product” survey on its small business website (www.irs.gov/smallbiz) has proven to be an invaluable resource for information and feedback on how its small business customers rate the variety of educational products it produces, including the website. As of September 2004, more than 2,736 responses were logged, information that has informed key decisions on revising and improving products, helping the agency tailor them to focus on the needs of the small business and self-employed community.
- NCUA recently reorganized its Office of Credit Union Development at NCUA headquarters and renamed it the Office of Small Credit Union Initiatives, offering local and regional workshops for small credit unions. As part of outreach efforts to improve compliance, examiners make interim supervisory contacts with credit unions to discuss problems or concerns with regard to regulatory compliance and other issues.

Notable: The U.S. Office of Special Counsel (OSC) has teamed up with EEOC to provide staff presentations to employers throughout the country via EEOC's Technical Assistance Program seminars. OSC attorneys also conduct outreach seminars across the country, including seminars organized by OSC grantees and specifically designed to address employer issues. In addition to the direct outreach activities of its own staff, OSC provided a grant to the Georgia Hispanic Chamber of Commerce to offer further compliance assistance among their members.

Reaching Out to the Underserved

Because of their unique communications needs, emerging small business communities may be among the first to experience Federal regulatory enforcement challenges and the last to learn of the resources available to them. ONO is responding to this challenge by holding meetings with these small business owners to hear their concerns.

In FY 2004, ONO exceeded its goal of 12, holding 14 Targeted Entrepreneur Area Market, or TEAM, meetings across the nation, as part of efforts to target leadership from diverse small business groups. Held in most cities where


Notable: DOT's Federal Motor Carrier Safety Administration (FMCSA) has increased its outreach to small business entities by providing assistance on its website in both English and Spanish. The agency also conducted outreach sessions within its divisions to provide educational and technical assistance to motor carriers who are subject to the New Entrant Safety Assurance Process and to the rules for Mexico-domiciled motor carriers.

RegFair Hearings are scheduled, TEAM meetings are designed to hear the concerns of women, Asian Americans, African Americans, Hispanic Americans, Native Americans, veterans, and other traditionally underserved markets, and to inform them of the full array of services, programs, and assistance available through ONO and the SBA. At a TEAM Meeting in New Orleans last year, a group of sugar cane farmers was in attendance, along with representatives of the Hispanic Chamber of Commerce, two African-American Chambers, a local NAWBO chapter, and a veterans' group.

The TEAM format is flexible and informal, lending itself to open discussion with all small business owners and representatives and with local SBA staff, banking representatives, and others. TEAM Meetings were held in the following cities in FY 2004:

Atlanta, GA, 12-4-03
 New Orleans, LA, 2-12-04
 Stamford, CT, 3-25-04
 St. Louis, MO, 4-12-04
 Madison, WI, 4-27-04
 Yonkers, NY, 4-28-04
 Lansing, MI, 4-30-04
 Rochester, MN, 6-10-04
 Columbus, OH, 6-22-04
 Billings, MT, 7-23-04
 Seattle, WA, 7-26-04
 Salem, OR, 7-28-04
 Phoenix, AZ, 9-29-04
 Albuquerque, NM, 9-30-04

Oficina del Ombudsman Nacional -
 Audiencia sobre
 Equidad en las
 Regulaciones



Para Negocios Pequeños
Miércoles, 29 de septiembre de 2004
Phoenix, Arizona

Los pequeños empresarios tendrán la oportunidad de discutir sus preocupaciones respecto al cumplimiento y la aplicación de regulaciones federales, durante este evento organizado por la Agencia Federal para el Desarrollo de la Pequeña Empresa.

QUIEN: El Administrador de la SBA, Hirose V. Barreto, y el Ombudsman Nacional de la SBA, Michael L. Barreto, así como miembros de la Junta de Equidad en las Regulaciones de la Región IX de la SBA, se reunirá con líderes comunitarios, miembros de asociaciones empresariales y comerciales, propietarios de negocios pequeños, o cualquier miembro de una delegación del Congreso, para discutir preocupaciones acerca de la aplicación y cumplimiento de regulaciones federales en el región.

DONDE: Maricopa Community College - Governance Board Room
 2411 West 14th Street
 Tempe, Arizona 85282

CUANDO: Miércoles, 29 de septiembre de 2004
 1:00 p.m. a 3:30 p.m.

MEDIOS: La audiencia estará abierta al público y la prensa. El Administrador Barreto y el Ombudsman Nacional Barreto estarán disponibles para entrevistas en los días previos al evento y el miércoles, 29 de septiembre después de la audiencia.

Los pequeños empresarios podrán recibir ayuda durante la audiencia si se inscriben con anticipación. Llame a la Oficina de Derecho de la SBA en Arizona al (602) 745-7300 o (602) 745-7228. También puede utilizar el correo electrónico smallbusiness@doe.usa.gov para preparar su solicitud, si cual se puede enviar por escrito o telefónicamente. Los empresarios se pueden inscribir hasta un mes antes. Visite la página electrónica de la Oficina del Ombudsman Nacional en www.sba.gov/ombudsman

☆☆☆ **Haga que su voz se Oiga !** ☆☆☆

Todos los programas y servicios del SBA son proporcionados a cualquier persona discapacitada. Los cambios en edificios para personas con discapacidades se hacen, facilitados por la persona o personas de asistencia. El número (800) 745-7300.

ONO also held two bilingual Hearings in FY 2004. One of these was even in Mandarin Chinese, held in Seattle, WA, on July 27, 2004. Another bilingual event was held in Spanish, in Phoenix, AZ, on September 29, 2004.

The Spanish ONO Web page may be found at www.sba.gov/espanol/Ombudsman_Nacional/

V. Looking Ahead...Plans for the Future

ONO will continue engaging in outreach efforts through Hearings and Roundtables, media outlets, RegFair members, SBA partners, trade associations, and chambers of commerce. ONO will also leverage resources through optimal use of technology, and will continue efforts not only to increase awareness of its program, but also to ensure its accessibility.

Continuing to Reach Out

ONO will continue to reach out to trades both nationally and locally through meetings, speeches, presentations, media, website updates, and regular communications. A renewed initiative to get the message out will focus on a monthly ONO newsletter disseminated to association leaders who represent small businesses in Washington and in the States. Ombudsman Barrera is committed to communicating the good news from agencies on their efforts for small business and about the many best practices taking place.

At the same time, RegFair Board members will be challenged to continue their work with community and small business organizations, relying on local SBA offices and local trade organizations for contact information and opportunities. To meet their agreed-upon goals, Board members will distribute materials, generate website awareness, and work with local media outlets to deliver the ONO message.

Making More Creative Use of Technology

Several technology efforts under way at ONO will continue to evolve, as new initiatives are implemented. The ONO website will become more interactive and user friendly, consistent with the overall implementation of the SBA redesign efforts agency-wide. Greater use of the Internet has improved the comment process even more, as the ease of electronic submission not only shortens the filing time but also expedites the Federal agency response process. And Board members can now access comment status according to their geographic areas via a dedicated section of the ONO website.

ONO also intends to enhance and/or implement tools that provide compliance assistance to the small business community. Planned Business Gateway Initiatives include a strategy for compliance assistance via website links, as part of the E-Government component of the President's Management Agenda.

Finally, more creative use of email gives ONO the opportunity for timely communication with Board members, Board alumni, Federal agencies, trade associations, and the public at large. The ONO E-Blast system adds subscribers every day, who learn of ONO events and activities across the country in which they can participate.

Increasing ONO Visibility

ONO will continue an active SBA District Office education program, dedicating a portion of each local visit to meeting with District office personnel to describe and explain ONO programs and services. Distribution of this Report to all District Directors and offices has had a positive effect nationwide by enhancing awareness and furthering the visibility of ONO. Additional marketing materials, consistent with the SBA marketing program, are in

development for distribution to Board members in support of their important work. At all levels, working with media representatives continues to be emphasized.

Building Partnerships

ONO has solidified its relationship with OMB's Office of Information and Regulatory Affairs (OIRA) as implementation of Small Business Paperwork Relief Act requirements for data collection and publication of Federal agency information continues to occur. ONO and RegFair Board members will also continue to work with the SBA Office of Advocacy and collective resource partners to support the model RegFlex State legislation. Additionally, ONO will keep adding to its growing list of Internet linkages with small business organizations including trade associations, chambers of commerce, NAWBO, NFIB and other organizations, as identified.

Finally...

The entrepreneurial spirit is alive and well in America, and small business is the driving force in the U.S. economy. The SBA and ONO's job is to help the small business men and women of America obtain the assistance, the advice, and the resources they need to be successful. ONO will continue to help, as much as possible, small business to navigate the obstacles of unfair and excessive regulatory enforcement. Fairness and encouragement for entrepreneurs should always be in the forefront. The time and money small businesses spend on excessive enforcement and unfair actions by Federal representatives could be better used to train employees, market their products, service their customers, upgrade their facilities or be with their families. ONO's mission is to break down unfair Federal enforcement actions that impede small business formation and growth.

President Bush has called on all Federal agencies to reduce and remove unnecessary and outdated regulations that affect small business. ONO will continue to carry out the President's mandate across the country, working with resource partners and small businesses directly affected by Federal actions. An unfettered economy will be a strong economy for which ONO will continue to do its part.